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No. 89-1080

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1989

THE BOARD OF EDUCATION OF OKLAHOMA CITY PUBLIC SCHOOLS, INDEPENDENT SCHOOL DISTRICT NO. 89, OKLAHOMA COUNTY, OKLAHOMA,

Petitioner,

vs.

ROBERT L. DOWELL, ET AL.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

JOINT APPENDIX

VOLUME II

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[795 F.2d 1516 (10th Cir.1986)]

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 85-1886

ROBERT L. DOWELL, an infant under the age of 14 years who sues by A.L. Dowell, his father as next friend,
Plaintiff-Appellant,

VIVIAL C. DOWELL, a minor, by her father, A.L. DOWELL, as next friend, *et al.*,
Intervening Plaintiffs-Appellants,

STEPHEN S. SANGER, JR., on behalf of himself and all others similarly situated, *et al.*,
Intervening Plaintiffs,

and

YVONNE MONET ELLIOT and DONNOIL S. ELLIOT, both minor children, by and through their parent and guardian, DONALD R. ELLIOT, *et al.*,
Applicants in Intervention-Appellants,

vs.

THE BOARD OF EDUCATION OF THE OKLAHOMA CITY PUBLIC SCHOOLS, INDEPENDENT DISTRICT No. 89, OKLAHOMA COUNTY, OKLAHOMA, A Public Body Corporate, *et al.*,
Defendants-Appellees.

[Filed June 26, 1986]

Appeal From the United States District Court
for the Western District of Oklahoma
(D.C. No. CIV-9452)

Theodore A. Shaw (Julius LeVonne Chamber and Napoleon B. Williams, Jr., with him on the briefs), New York, New York; John W. Walker, Little Rock, Arkansas; and Lewis Barber, Jr., of Barber/Traviolia, Oklahoma City, Oklahoma; for Plaintiffs and Applicants in Intervention-Appellants.

Ronald L. Day of Fenton, Fenton, Smith, Reneau & Moon, Oklahoma City, Oklahoma, for The Board of Education of the Oklahoma City Public Schools, Independent District No. 89, Oklahoma County, Oklahoma, Defendant-Appellee.

William Bradford Reynolds, Assistant Attorney General, Walter W. Barnett, Mark L. Gross, and Michael Carvin, Attorneys, Department of Justice, Washington, D.C., filed an Amicus Curiae brief for the United States of America.

Before MOORE and ANDERSON, Circuit Judges, and JOHNSON, District Judge.*

MOORE, Circuit Judge.

This appeal is the latest chapter in the odyssey of the desegregation of the public school system in Oklahoma City, Oklahoma. After many years of litigation, in 1977 the trial court found that the school district had achieved

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*Honorable Alan Johnson, United States District Judge for the District of Wyoming, sitting by designation.

unitariness and entered an order terminating the court's active supervision of the case. The parties are now before this court after an unsuccessful attempt to enjoin the school district from altering the attendance plan previously mandated by the district court. The district court, in part relying on its 1977 termination order, not only denied the petitioners' motion to reopen the case, but also decided the issue of the constitutionality of the new attendance plan. *Dowell v. School Board of Oklahoma City Public Schools*, 606 F. Supp. 1548 (W.D. Okla. 1985). In this appeal, we address only the precise question of whether the trial court erred in denying the motion to reopen. We hold, under the facts present here, that the court erred and remand for additional factual determinations.

I.

This case was filed in 1961, and the history of the litigation is extensive.[1] In the ensuing years, the parties struggled through the difficult task of desegregating the public schools, each proffering plans to accomplish that goal. Finally, after finding the district had "emasculate[d]" a previously approved plan, the district court ordered the implementation of the so-called "Finger Plan." *Dowell v. School Board of Oklahoma City Public Schools*, 338 F. Supp. 1256, 1263 (W.D. Okla.), *aff'd* 465 F.2d

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[1] *See Dowell v. School Board of Oklahoma City Public Schools*, 219 F. Supp. 427 (W.D. Okla. 1963); *Dowell v. School Board of Oklahoma City Public Schools*, 430 F.2d 865 (10th Cir. 1970); *Dowell v. School Board of Oklahoma City Public Schools*, 338 F. Supp. 1256 (W.D. Okla.), *aff'd*, 465 F.2d 1012 (10th Cir.), *cert. denied*, 409 U.S. 1041 (1972).

1012 (10th Cir.), *cert. denied*, 409 U.S. 1041 (1972). That plan, which was instituted during the 1972-1973 school year, restructured attendance zones for high schools and middle schools so that each level enrolled black and white students. At the elementary level, all schools with a majority of black pupils became fifth grade centers which provided enhanced curricula. All elementary schools with a majority of white students were converted to serve grades one through four. Generally, the white students continued to attend neighborhood schools while black students in grades one through four were bused to classes. When white students reached the fifth grade, they were bused to the fifth grade centers, while black fifth graders attended the centers in their neighborhoods. Schools which were located in integrated areas qualified as "stand alone schools," and the students in grades one through five remained in their own neighborhoods.

In June 1975, the school board moved to close the case on the ground that it had "eliminated all vestiges of State-imposed racial discrimination in its school system, and [that it was] . . . operating a unitary school system." Although the motion was contested, the court terminated active supervision of the case because it found the Finger Plan had achieved its objective. *Dowell v. School Board of Oklahoma City Public Schools*, No. CIV-9452, slip op. (W.D. Okla. Jan. 18, 1977). *See Dowell*, 606 F. Supp. at 1551 (quoting the unpublished order in part). The order was not appealed. The 1977 order did not vacate or modify the 1972 order mandating implementation of the Finger Plan.

In February 1985, the plaintiffs sought to reopen the case, claiming the school board unilaterally abandoned

the Finger Plan and instituted a new plan for school attendance. The Student Reassignment Plan, which has already been implemented, eliminates compulsory busing of black students in grades one through four and reinstitutes neighborhood elementary schools for these grades. Free transportation is provided to children in the racial majority in any school who choose to transfer to a school in which they will be in the minority. The racial balance of fifth grade centers, middle schools, and high schools is maintained through mandatory busing. As a result of this plan, thirty-three of the district's sixth-four elementary schools are attended by students who are ninety percent, or more, of one race.

The district court denied the motion to reopen.[2] The court held that the Student Reassignment Plan was not constitutionally infirm and, therefore, no "special circumstances" were present that would justify reopening the case. *Dowell*, 606 F.Supp. at 1557. The court concluded as a matter of law: (1) The principles of res judicata and collateral estoppel prohibit the plaintiffs from challenging

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[2] Plaintiffs contend that the district court erred in not specifically granting their motion to intervene. Nevertheless, the court held those who sought intervention were within the ambit of the orginal [sic] plaintiff class, and those persons, through their counsel, actively participated in the hearing to reopen. They were clearly treated as party litigants even though a formal order granting them intervention was not entered. Indeed, at the outset of the hearing, the court stated that the parties "did meet the requirement to be a plaintiff." As a practical matter,the appealing parties were allowed to intervene despite the order denying all relief prayed for; therefore, within the peculiar context of this case, we conclude the issue is moot and the appealing persons are proper parties.

the court's 1977 finding that the school system was unitary. (2) The 1985 school district displays all indicia of unitariness. (3) Neighborhood schools, when impartially maintained and administered, are not unconstitutional. Moreover, the existence of racially identifiable schools, without a showing of discriminatory intent, is not unconstitutional. (4) The Student Reassignment Plan is not discriminatory and was not established with discriminatory intent.

On appeal, the plaintiffs contend the trial court erred in arriving at these conclusions without reopening the case and without giving them as adequate opportunity to present evidence on the substantive issues. We agree and hold that, while the principles of res judicata may apply in school desegregation cases, a past finding of unitariness, by itself, does not bar renewed litigation upon a mandatory injunction. Moreover, when it is alleged that significant changes have been made in a court-ordered school attendance plan, any party for whose benefit the plan was adopted has a right to be heard on the issue of whether the changes will effect the unitariness of the system. In such circumstances, it is not necessary for the party seeking enforcement of the injunction to prove the changes were motivated by a discriminatory intent. Accordingly, we conclude the trial court erred in not reopening the case.

II.

A.

Any analysis of the legal principles governing this case must start with the procedural framework in which

it was postured when the plaintiffs sought to reopen. When the defendant board adopted the Student Reassignment Plan, the 1972 order approving the Finger Plan and ordering its immediate implementation still governed the parties. That order was in the nature of a mandatory injunction, and the effect of that order was not altered by the 1977 order terminating the court's active supervision of the case.

Perhaps the members of the present school board acted upon the belief that the 1972 order was no longer effective; if so, their belief was unwarranted. Indeed, the 1972 order specifically provided:

> The Defendant School Board and the individual members thereof, *both present and future*, together with the Superintendent of Schools, shall implement and place [the Finger Plan] into effect . . . .
>
> The Defendant School Board shall not alter or deviate from the [Finger Plan] . . . without the prior approval and permission of the court. If the Defendant is uncertain concerning the meaning of the plan, it should apply to the court for interpretation and clarification.

Dowell, 338 F.Supp. at 1273 (emphasis added).

Nothing in the 1977 order tempered the 1972 mandatory injunction. In fact, the 1977 order states:

> The Court has concluded that . . . [the Finger Plan] was indeed a Plan that worked and that substantial compliance with the constitutional requirements has been achieved. The School Board, under the oversight of the Court, has operated the Plan properly, and the Court does not foresee that the termination of its jurisdiction will result in the dismantlement of the Plan

> or any affirmative action by the defendant to undermine the unitary system so slowly and painfully accomplished over the 16 years during which the cause has been pending before the Court.
>
> . . . The Court believes that the present members *and their successors* on the Board will now and in the future continue to follow the constitutional desegregation requirements.

Dowell, No. CIV-9452, slip op. at 1 (W.D. Okla. Jan. 18, 1977) (emphasis added).

In light of these statements reinforcing the importance of the remedial injunction and the lack of any specific or implied alteration of that remedy, we must conclude the court intended the 1972 order to retain its vitality and prospective effect. Therefore, the competing interests of both parties must be assessed first within the penumbra of the outstanding 1972 order. To do otherwise renders all of what has occurred since 1961 moot and mocks the painful accomplishments of sixteen years of litigation and active court supervision.

As amicus, the government argues that once a finding of unitariness is entered, all authority over the affairs of a school district is returned to its governing board, and all prior court orders, including any remedial busing order, are terminated. According to the government, the defendants could not be compelled to follow the Finger Plan once the court determined the district was unitary. We find the contention without merit. The parties cannot be thrust back to the proverbial first square just because the court previously ceased active supervision over the operation of the Finger Plan.

While there are sound reasons for courts to seek the earliest opportunity to return control of school district affairs to the local body elected for that purpose, those reasons do not require abandonment of the inherent equitable power of any court to enforce orders which it has never vacated. The court's authority is not diminished once the original case has been closed because the viability of a permanent injunction does not depend upon this ministerial procedure. *See Ridley v. Phillips Petroleum Co.*, 427 F.2d 19 (10th Cir. 1970). Therefore, termination of active supervision of a case does not prevent the court from enforcing its orders. If such were the case, it would give more credence to the ministerial function of "closing" a case and less credence to the prospective operation of a mandatory injunction.[3] *See Berman v. Denver Tramway Corp.*, 197 F.2d 946 (10th Cir. 1952).

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[3] The Fourth Circuit has taken a different view with which we cannot agree. In *Riddick v. The School Board of the City of Norfolk*, No. 84-1815, slip op. (4th Cir. 1986), the court seems to treat a district court order terminating supervision as an order dissolving a mandated integration plan, despite the absence of a specific order to that effect. The court makes a bridge between a finding of unitariness and voluntary compliance with an injunction. We find no foundation for that bridge. It also appears inconsistent with *Lee v. Macon County Board of Education*, 584 F.2d 78 (5th Cir. 1978), in which the court held that a finding by the district court that the school system was "unitary in nature" did not divest the court of subject matter jurisdiction of a petition to amend the desegregation plan where the court had not dismissed the case. A finding of unitariness may lead to many other reasonable conclusions, but it cannot divest a court of its jurisdiction, nor can it convert a mandatory injunction into voluntary compliance.

The government's position ignores the fact that the purpose of court-ordered school integration is not only to achieve, but also to *maintain*, a unitary school system. *Keyes v. School District No. 1, Denver, Colo.*, 609 F. Supp. 1491, 1515 (D. Colo. 1985).[4] When the district court terminated active supervision over this case, it acknowledged that the original purpose of the law suit had been achieved and that the parties had implemented a means for maintaining that goal. *Dowell*, 606 F. Supp. at 1551 (1977 termination order). However, without specifically dissolving its decree, the court neither abrogated its power to enforce the mandatory order nor forgave the defendants their duty to persist in the elimination of the vestiges of segregation.

We therefore see no reason why this case should be treated differently from any other case in which the beneficiary of a mandatory injunction seeks enforcement of the relief previously accorded by the court. *See Swann*, 402 U.S. at 15-16. When a federal court has restored unsupervised governance to a board of education, the board must, like any other litigant, return to the court if it wants to alter the duties imposed upon it by a mandatory

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[4] *See also Lee v. Macon County Board of Education*, 584 F.2d 78, 81 (5th Cir. 1978) (after full responsibility for educational decisions has been returned to public school officials by the court, they "are bound to take no actions which would reinstitute a dual school system"); *Graves v. Walton County Board of Education*, 686 F.2d 1135 (11th Cir. 1982), *aff'g in part, rev'g in part*, 91 F.R.D. 457 (M.D. Ga. 1981) (despite an earlier finding that desegregation had been accomplished, the courts reject a modification of the 1968 desegregation plan which would effectively resegregate the system).

decree. *Vaughns v. Board of Education of Prince George's County*, 758 F.2d 983 (4th Cir. 1985). *See also Pasadena City Board of Education v. Spangler*, 427 U.S. 424 (1976). It is only when the order terminating active supervision also dissolves the mandatory injunction that the governing board regains total independence from the previous injunction.

B.

The record in this case indicates that the defendants, unilaterally and contrary to the specific provisions of the 1972 order, have taken steps to avoid the duties imposed upon them by a continuing decree. By implementing the Student Reassignment Plan, the defendants have acted in a manner not contemplated by the court in its earlier decrees. The Plaintiffs now are simply attempting to reassert the validity of the 1972 order and to perpetuate the duties placed upon the district.

When a party has prevailed in a cause for mandatory injunction, that party has a right to expect that prospective relief will be maintained unless the injunction is vacated or modified by the court. *See W.R. Grace and Co. v. Local 759, International Union of United Rubber Workers of America*, 461 U.S. 757 (1983). *See also GTE Sylvania, Inc. v. Consumers Union of United States*, 445 U.S. 375 (1980). To make the remedy meaningful, the injunctive order must survive beyond the procedural life of the litigation and remain within the continuing jurisdiction of the issuing court. *E.E.O.C. v. Safeway Stores, Inc.*, 611 F.2d 795 (10th Cir. 1979), *cert. denied*, 446 U.S. 952 (1980); 11 Wright & Miller, Federal Practice and Procedure § 2961 (1973). This

binding nature of a mandatory injunction is recognized in school desegregation cases. *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 439 (1976).

Thus, the beneficiary of a mandatory order has the right to return to court to ask for enforcement of the rights the party obtained in the prior litigation. To invoke the court's authority, the part seeking enforcement must establish that the injunctive decree is not being obeyed. *Northside Realty Associates, Inc. v. United States*, 605 F.2d 1348 (5th Cir. 1979).

C.

Although prospective orders must be obeyed, federal courts are also empowered to alter mandatory orders when equity so requires. *United States v. United Shoe Machinery Corp.*, 391 U.S. 244 (1968); *System Federation No. 91, Railway Employee's Department v. Wright*, 364 U.S. 642 (1961); *United States v. Swift & Co.*, 286 U.S. 106 (1932). We have previously adopted the rationale behind these cases in establishing guidelines "applicable in all instances where . . . the relief sought is escape from the impact of an injunction." *Securities and Exchange Commission v. Jandal Oil & Gas, Inc.*, 433 F.2d 304, 305 (10th Cir. 1970).

Given the mandatory nature and prospective effect of an injunctive order, changes in injunctions must not be lightly countenanced but must be based upon a "substantial change in law or facts." *Securities and Exchange Commission v. Thermodynamics, Inc.*, 464 F.2d 457, 460 (10th Cir. 1972), *cert. denied*, 410 U.S. 927 (1973). A change in attitude by the party subjected to the decree is not enough of a change in circumstances to warrant withdrawing the

injunction. *Id.* Therefore, when a party establishes that another has disregarded a mandatory decree or has taken action which has resulted in a deprivation of the benefits of injunctive relief, the court cannot lightly treat the claim. Having once determined the necessity to impose a remedy, the court should not allow any modification of that remedy unless the law or the underlying facts have so changed that the dangers prevented by the injunction "have become attenuated to a shadow," *Jan-dal*, 433 F.2d at 305, and the changed circumstances have produced " 'hardship so extreme and unexpected' as to make the decree oppressive." *Safeway*, 611 F.2d at 800 (quoting *Swift & Co.*). *see also United States v. United Shoe Machinery Corp.*, 391 U.S. at 251-52. Indeed, this "difficult and . . . severe requirement" is necessary to be consistent with res judicata principles. *Thermodynamics*, 464 F.2d at 460.

D.

The court's 1972 order requiring implementation of the Finger Plan was binding upon both sides. More pointedly, the order specified that the defendants were not to "alter or deviate from the [Finger Plan] . . . without the prior approval and permission of the court." *Dowell*, 338 F.Supp. at 1273. While defendants unilaterally could not take action contrary to the plan, plaintiffs also could not expect more than the approved plan provided. When, five years later, the court determined that the implementation of the Finger Plan had resulted in unitariness within the district, that finding became final, and it, too, is binding upon the parties with equal force. Yet, that historical finding does not preclude the plaintiffs from asserting

that a continuing mandatory order is not being obeyed and that the consequences of the disobedience have destroyed the unitariness previously achieved by the district.

Thus, while the trial court properly refused to permit the plaintiffs to relitigate conditions extant in 1977, it erred in curtailing the presentation of evidence of changes that have since occurred. Consequently, plaintiffs were deprived of the opportunity to support their petition for enforcement of the court's prior order.

In reaching this conclusion, we are not traveling new trails. We contrast this case with the *Spangler* line of cases[5] in which as aggrieved party sought remedial relief in addition to the previous decree. Here, the plaintiffs do not seek the continuous intervention of the federal court decried by the Supreme Court. We are not faced with an attempt to achieve further desegregation based upon minor demographic changes not "chargeable" to the board. *Spangler*, 427 U.S. at 435. Rather, here the allegation is that the defendants have intentionally abandoned a plan which achieved unitariness and substituted one which *appears* to have the same segregative effect as the attendance plan which generated the original lawsuit.

Given the sensitive nature of school desegregation litigation and the peculiar matrix in which such cases exist, we are cognizant that minor shifts in demographics or minor changes in other circumstances which are not

[5] *Spangler v. Pasadena City Board of Education*, 375 F. Supp. 1304 (C.D. Cal. 1974), *aff'd* 519 F.2d 430 (9th Cir. 1975), *vacated*, 427 U.S. 424 (1976), *on remand*, 549 F.2d 733 (9th Cir. 1977).

the result of an intentional and racially motivated scheme to avoid the consequences of a mandatory injunction cannot be the basis of judicial action. *See Spangler*, 427 U.S. at 434-35; *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). However, when it is asserted that a school board under the duty imposed by a mandatory order has adopted a new attendance plan that is significantly different from the plan approved by the court and when the results of the adoption of that new plan indictate a resurgence of segregation, the court is duty bound either to enforce its order or inquire whether a change of conditions consistent with the test posed in *Jan-dal* has occurred.

Therefore, consistent with traditional concepts of injunctive remedies in federal courts, plaintiffs have the right to a full determination of whether and to what extent their previously decreed rights have been jeopardized by the defendants' actions subsequent to the entry of the mandatory decree. Moreover, we hold the plaintiffs' assertion that the defendants abandoned the Finger Plan without court approval constitutes the "special circumstances" the trial court found absent from the case. The existence of these circumstances should have been recognized by the trial court as a basis for relief under Fed. R. Civ. P. 60(b), and the court's failure to do so results in manifest abuse of discretion which requires reversal. *See Security Mutual Casualty Co. v. Century Casualty Co.*, 621 F.2d 1062 (10th Cir. 1980).

III.

Having concluded the district court erred in not granting plaintiffs' motion to reopen, we must decide

whether the error is significant in light of the court's factual findings on the board's new plan. After review of the evidence, which led the district court to hold the new plan was not constitutionally infirm, we conclude that reversal will not be futile.

The record indicates that the hearing from which the court's findings were drawn was called for a narrow purpose. The order setting the hearing provided:

> [T]he motion to intervene and reopen and the defendants' response join the issues, and the matters in them are set for evidentiary hearing . . . at which time *the question of whether the case shall be reopened and the applicants allowed to intervene shall be tried and disposed of.*

(Emphasis added.) From the outset, then, the only issues the parties were notified to present to the court dealt with reopening and intervention. The court did not indicate that it intended to hear evidence upon or determine the substantive constitutional issues relating to the plan or its effects.

Plaintiffs now argue they were unprepared to be heard on the ultimate issues. Indeed, on two occasions plaintiffs' counsel inquired whether the only issue to be heard was that of reopening, and the court replied affirmatively. Hence, plaintiffs argue their understanding of the limited scope of the hearing curtailed their cross-examination of the defendants' witnesses and prevented them from introducing evidence of alternative plans. Our review of the record supports this assertion. While evidence bearing on the substantive issue was presented, it focused on the underlying reasons for reopening the case rather than on the ultimate constitutional issue.

In reaching the substantive issues, the district court also improperly recast the burden of proof. As we have already noted, the plaintiffs, as the beneficiaries of the original injunction, only have the burden of showing the court's mandatory order has been violated. *Northside Realty Associates, Inc. v. United States*, 605 F.2d 1348 (5th Cir. 1979). The defendants, who essentially claim that the injunction should be amended to accommodate neighborhood elementary schools, must present evidence that changed conditions require modification or that the facts or law no longer require that enforcement of the order. *See E.E.O.C. v. Safeway Stores, Inc.*, 611 F.2d 795 (10th Cir. 1979), *cert. denied*, 446 U.S. 952 (1980).

Thus, by placing the burden on the plaintiffs to show the school district was not longer unitary, the court changed the usual course of what in reality is a petition for a contempt citation. The Plaintiffs were required not only to prove the mandatory injunction had been violated, but also that the violation contravened the constitution. In the framework of *this* case, the latter element was beyond the scope of the hearing and certainly never the plaintiffs' burden.

Accordingly, we believe the trial court reached the merits prematurely. We applaud the court's effort to bring speedy resolution to a difficult issue, but fairness and our understanding of the procedures governing federal injunctive remedies require us to conclude the court did not give the moving parties ample opportunity to develop substantive issues.

We have confined our analysis to the narrow issue of the plaintiffs' right to reopen; therefore, our holding

should not be construed as addressing, even implicitly the ultimate issue of the constitutionality of the defendants' new school attendance plan. The judgment of the trial court is reversed and the case is remanded for further proceedings to determine whether the original mandatory order will be enforced or whether and to what extent it should be modified.

[RECORD, VOLUME I, doc. 17]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

ROBERT L. DOWELL, et al., Plaintiffs,	:	CIV-61-9452-B
v.	:	
BOARD OF EDUCATION OF THE OKLAHOMA CITY PUBLIC SCHOOLS, et al., Defendants.	:	

FINAL PRETRIAL ORDER

Date of Conference: June 4, 1987
Appearances: Lewis Barber, Jr., Oklahoma City, Oklahoma, for plaintiffs
John W. Walker, Little Rock, Arkansas, for plaintiffs
Theodore M. Shaw, New York, New York, for plaintiffs
Norman J. Chachkin, New York, New York for plaintiffs
Ronald L. Day, Oklahoma City, Oklahoma, for defendant
Laurie W. Jones, Oklahoma City, Oklahoma, for defendant

I. Preliminary Statement

This case is before the Court pursuant to the remand directions of the United States Court of Appeals for the Tenth Circuit, 795 F.2d 1516 (10th Cir.), *cert. denied*, 93 L. Ed. 2d 370 (1986).

In 1972 this Court granted plaintiffs injunctive relief designed to dismantle the dual school system in Oklahoma City. 338 F. Supp. 1256 (W.D. Okla.), *aff'd* 465 F.2d

1012 (10th Cir.), *cert. denied*, 409 U.S. 1041 (1972). On January 18, 1977 the Court entered an Order finding that the Board had carried out the injunction and has "slowly and painfully accomplished" the goal of establishing a "unitary system." The Order dissolved the Biracial Committee previously created and directed that "Jurisdiction in this case is terminated . . . " but it did not by its terms vacate or dissolve the injunctive relief granted in 1972.

From the 1972-73 school year through the 1984-85 school year, the public schools of Oklahoma City were operated consistent with the 1972 decree. Although changes in pupil assignments were made from time to time during those years (for example, as schools were closed due to declining system-wide enrollment), the school system continued to utilize the techniques of pairing, clustering, and compulsory transportation at the elementary level that had been the essential feature of the assignment plan approved and ordered into effect in 1972.

Effective for the 1985-86 school year, the Board of Education adopted a new plan for pupil assignment in grades 1-4 which eliminated pairing and clustering, substituting a "neighborhood school" assignment plan which eliminated compulsory transportation at those grade levels and utilized zone lines similar to those employed for elementary school assignments prior to 1972. Under this method of pupil assignment, some K-4 elementary schools in the district became predominantly Black for the first time since 1972. (Fifth-grade centers were relocated throughout the school district rather than being placed only in the northeastern section of the city and

these schools, like those serving grades 6-12, remain desegregated.)

The plaintiffs sought to intervene new class representatives and to reopen this action in 1985, to challenge the decision of the school board to alter the basic method of pupil assignment at grade levels 1-4. This Court denied relief, but the Court of Appeals has remanded for a determination whether the school board can establish sufficient justification for the Court to dissolve or modify the 1972 injunctive decree. *See* 795 F.2d at 1521-22. On February 5, 1987, the Court granted the Petition for Intervention and plaintiffs' Motion to Reopen, and set the matter down for hearing on the merits.

In these remand proceedings, the burden of proof rests with the school board. "The defendants, who essentially claim that the injunction should be amended to accommodate neighborhood schools, must present evidence that changed conditions require modification or that the facts or law no longer require the enforcement of [1972] order." *Id.* at 1523.

II. Stipulations

A. All parties are properly before the Court.

B. All parties have been correctly designated.

C. After exchanging and reviewing the exhibits, although there are some objections the parties have agreed to stipulate as to the admissibility of many exhibits. These stipulations are detailed in Part IV of the Pre-Trial Order *infra*.

F. Legal Issues:

The primary legal issues presented in the current posture of the case are:

1. Have conditions or circumstances so changed since entry of this Court's 1972 decree that it should be dissolved or modified to permit use of defendants' "neighborhood school" assignment plan for school attendance in grades 1-4?

2. If such dissolution or modification is warranted, is the school board's 1985 plan constitutional?

3. Has the school district maintained a unitary school system since 1977?

4. May plaintiffs seek modification to alter the form of relief provided through the 1972 decree, and what showing must plaintiffs make to justify such relief?

G. Factual Issues*:

1. Are the elementary schools with enrollments greater than 90% Black under the school board's 1985 student assignment plan for grades 1-4 vestiges of the prior dual school system?

2. Is the residential segregation which exists in Oklahoma City today a vestige of previous unlawful state-compelled segregation?

3. How has white student enrollment in the Oklahoma City Public Schools changed since 1972,

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* The parties have attempted to identify major factual issues. However, it should be noted that the parties are not in agreement about the significance of each. Plaintiffs believe that, with respect to some of the these areas, the facts articulated in support of the decision to adopt the 1985 plan, even if true, are insufficient as a matter of law to justify that plan. The school board believes that each of the factual issues is material to the legal determinations which the Court must make. Both parties agree that no single factual issue is necessarily outcome-determinative.

and what further changes would result from resumption of the Finger Plan for elementary schools or from implementation of the plans proposed by plaintiffs?

4. Did the school board adopt the 1985 student assignment plan without the intent to discriminate on the basis of race?

5. Did the school board adopt the 1985 student assignment plan for legitimate non-discriminatory reasons?

6. Did parental and community involvement, including PTA membership and participation, decline in the Oklahoma City Public Schools after 1972?

7. What effect has the school board's 1985 plan had, and what effect will it have in the future on parental and community involvement?

8. Did elementary school students' participation in extra-curricular activities decline in the Oklahoma City Public Schools after 1972?

9. What effect has the school board's 1985 plan had, and what effect will it have in the future on elementary school students' participation in extra-curricular activities?

10. What had been the pattern, if any, of faculty assignments to elementary schools since 1977?

11. Are present teacher assignment practices a vestige of previous unlawful state-compelled segregation, or are they motivated by discriminatory intent?

12. Did the Finger Plan result in placing a disproportionate share of the burdens of desegregation upon young Black Children in grades 1-4, and did demographic changes after 1972 increase those burdens?

13. Did the "stand-alone" feature of the Finger Plan, in combination with demographic changes after

1972, result in placing further burdens on Black children?

14. Are plaintiffs' proposed plans logistically, financially and educationally feasible?

15. Does the racial composition of public schools affect the academic and social achievement of black students?

16. Does parental and community involvement in the public schools affect the academic and social achievement of all students?

17. Is the 1985 student assignment plan being implemented in a uniform, equitable and non-discriminatory manner?

18. What are the attitudes of the school administration and the community with respect to the 1985 student assignment plan?

19. Is the implementation of the 1985 student assignment plan accomplishing the objectives of the plan?

III. Contentions

The contentions of the plaintiffs and defendants are attached hereto as Appendices "A" and "B" respectively.

IV. Exhibits

1. Attached hereto as Exhibits "C" and "D" respectively are the Exhibit Lists of the plaintiffs and defendants. Exhibits not listed will not be admitted by the Court unless good cause be shown and justice demands their admission.

2. The parties stipulate that the following exhibits may be received in evidence without objection (the parties reserve the right to argue to the Court concerning the weight properly to the accorded to any exhibits):

Plaintiffs' Exhibits 1-29, 36-40, 47, 55, 56, 58

Defendants' Exhibits 1-6, 20-21, 24, 28, 34-37, 41-48, 57, 60-84, 88, 90-109, 111-121, 123-132, 134-137, 141-148, 151-160, 162-164, 172-174, 179-184, 187-196, 201-210

3. Plaintiffs agree to the introduction into evidence of the following exhibits subject to defendants' willingness to stipulate as indicated:

a. Defendants' Exhibit 7, if it is stipulated that the exhibit is based upon Defendants' Exhibit 28; and if it is stipulated that the exhibit is a demonstrative representation of only *selected* Black population relocations in the Oklahoma City School District in the years indicated, that is, Black students, living within the area indicated who were enrolled in kindergarten in the district during the 1974-75 school year; and if it is stipulated that the exhibit does not indicate the number of students who, according to the records of the district, resided at the same address in 1977-78; and if it is stipulated that the figure "209" labelled "to Non-ISD" on the exhibit represents the number of 1974-75 Black Kindergarten students whose names were not found on the district's enrollment records in the 1977-78 school year or for whom the district's enrollment records did not indicate an address, rather than the number of 1974-75 Black Kindergarten students for whom the district had an out-of-ISD 89 address in the 1977-78 school year.

b. Defendants' Exhibit 8, subject to the presentation of an adequate foundation explaining the manner in which the data from which the exhibit was prepared were gathered and analyzed, if stipulations similar to those described above for Defendants' Exhibit 7 are made concerning the selective character of the population movements analyzed, the fact that the exhibit does not include an indication of the number of students who did not move, and the meaning of the label "To Non-ISD."

c. Defendants' Exhibit 9, subject to the presentation of an adequate foundation explaining the manner in which the data summarized in part (b) of the exhibit were gathered and analyzed, and if it is stipulated that the data summarized in part (a) are from Defendants' Exhibit 28; and if it is stipulated that the numbers indicated as being "no longer in district" represent students whose names did not appear on the district's enrollment records for the later year, or for whom the district had no address on its enrollment records for the later year, rather than students for whom the district had an out-of-ISD 89 address for the later year.

d. Defendants' Exhibits 12 and 13, if it is stipulated that the exhibits are demonstrative representations of the proportions of students in grades K-12 now living within each of the "attendance areas" into which the school district has been divided who are Black, rather than representations of school enrollments.

e. Defendants' Exhibits 15-19, if the source of the data represented in these exhibits is stipulated.

f. Defendants' Exhibits 58 and 59, if it is stipulated that the term "population" on each of these exhibits refers to the trial number of K-12

students enrolled in the public schools of District I-89 for the years indicated.

4. Plaintiffs do not intend to offer into evidence their proposed Exhibits 42-45, 49, 51 or 53. At this time plaintiffs do not expect to offer Exhibits 59, 61 or 63.

5. Defendants do not intend to offer into evidence their proposed Exhibits 149 or 150.

6. The parties are unable to stipulate to the admission into evidence of the following exhibits in the absence of presentation of an adequate foundation, and they reserve the right to object to the exhibits based upon information developed during the presentation of foundation; unless otherwise indicated in this Pre-Trial Order, however, the parties are not at this time aware of other bases for objection to these exhibits:

Plaintiffs' Exhibits 41, 46, 48, 50, 52, 54

Defendants' Exhibits 11, 14, 22, 23, 25, 26, 29-33, 38-39, 40, 56, 56A, 85-87, 89, 110, 133, 138-140, 165-171, 175-178, 197-200

7. Plaintiffs object to the following exhibits on the ground of relevancy: Defendants' Exhibits 38, 39, 49-55, 186.

8. Defendants object to the following exhibits on the ground of relevancy: Plaintiffs' Exhibits 30-35, 48, 57.

9. Plaintiffs object to the following exhibits on the ground of hearsay: Defendants' Exhibits 10, 27, 186.

10. The parties reserve the right to object to the following exhibits which have not yet been completed or

withdrawn from the Clerk's Office and been made available for inspection:

Plaintiffs' Exhibits 3, 60, 62

Defendants' Exhibits 122, 161, 185

V. Witnesses

Attached hereto as Exhibits "E" and "F" respectively are the witness lists of the plaintiffs and defendants. No unlisted witness will be permitted to testify as a witness in chief except by leave of Court when justified by exceptional circumstances.

VI. Trial Briefs

The parties are submitting trial briefs simultaneously with the filing of this Pre-Trial Order.

The Court has ordered that proposed Findings of Fact and Conclusions of Law be submitted within two weeks of the conclusion of the trial herein.

VII. Estimated Trial Time

Five to ten days.

VIII. Possibility of Settlement

Good ___ Fair ___ Poor X

All parties approve this Order and understand and agree that this Order supersedes all pleadings and shall not be amended except by Order of the Court.

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APPROVED this ___ day of _____, 1987.

_____
LUTHER BOHANAN
UNITED STATES
DISTRICT JUDGE

APPENDIX "A"

Plaintiffs' Contentions

1. Circumstances and conditions have not changed since entry of the Court's Order in 197[illegible] so as to provide legal justification for the modification or dissolution of the decree sought by the school board.

The purpose of the 1972 Order was to eliminate pupil segregation at all grade levels from the Oklahoma City Public Schools. The Court explicitly found that a system of geographic zoning (often referred to as "neighborhood schools") for pupil assignments was insufficient to achieve that purpose in Oklahoma City because of the pattern of intense racial residential segregation and the deliberate location of schools for students of each race in areas of racial residential concentration.

Moreover, the Court has found in this case that the pattern of residential segregation, and specifically the overwhelming concentration of Black residents in northeastern Oklahoma City, was the result of deliberate discriminatory policies enforced and maintained as the public policy of the State of Oklahoma and of school authorities' actions.

These underlying conditions have not been altered since entry of the Court's 1972 decree:

(a) Although the public schools of the district were desegregated between 1972-73 and 1984-85, all of the demographic exhibits to be introduced at the hearing indicate clearly that the northeastern portion of Oklahoma City is today as nearly exclusively Black as it was in 1972.

(b) At the 1985 hearing, the President of the school board testified that the attendance zones adopted for K-4 pupil assignment in 1985-86 and 1986-87 were "the same neighborhood boundaries as have existed for years" (Tr. 336). A comparison of the attendance zones used by the district for elementary schools in the early 1960's, in 1970, and currently, confirms this statement.

(c) As the enrollment figures demonstrate graphically, reimposition of those zoning patterns on the unchanged areas of minority residential concentration in the school district results in precisely the consequences which the 1972 Order was intended to prevent: the creation of a set of virtually all-Black elementary schools, enrolling a substantial proportion of all Black students in the district at grade levels K-4 or 1-4. Thus, the 1985-86 assignment plan for grades 1-4 uses the same pre-1972 attendance technique (geographic zoning) and many of the identical pre-1972 zones (modified principally by school closings) and produces the same segregated, virtually all-Black facilities (except for those which were closed) with which the Court was confronted in 1972.

2. Although the district's schools were desegregated between 1972-73 and 1984-85, the method of pupil assignment was not fully equitable.

The author of the plan embodied in the 1972 decree, Dr. Finger, testified without contradiction that a lack of adequate time and information accounted for his placement of only a single grade in formerly all-Black schools. As a result, all young Black children were transported out of Black residential areas for the first four years of school

(after kindergarten), without exception, while white students in the elementary grades were transported only for a single year, in the fifth grade.

This inequity was never alleviated, despite the fact that between 1972-73 and 1984-85 the school board made numerous modifications to the plan for reasons such as school closings.

Additionally, the "stand-alone school" feature of the original Finger Plan, over time, increased the burdens borne disproportionately by Black children. As new areas of the district qualified for "stand-alone" status the distances which Black students in grades 1-4 would have to be transported increased and the likelihood that schools in Black residential areas would be closed increased.

If, as plaintiffs contend, the school board is unable to meet its burden of demonstrating adequate legal justification for returning to a system of geographic zoning to assign pupils in grades 1-4, a new plan of pupil assignment for these grades consistent with the Court's 1972 decree must still be developed by defendants, since the board has voted to close 7 schools at the end of this year. Plaintiffs contend that the Court should require that such a new plan avoid the inequities of the disproportionate busing of younger Black students, and the threatened discontinuation of schools in Black residential areas which results from the Finger Plan's "stand-alone school" feature.

Even if a new plan of assignment taking account of the additional school closings did not have to be drawn, plaintiffs would be entitled to seek modification of the pupil assignment plan to allocate its burdens more fairly

between Black and white students. Such a modification would facilitate the central purpose of the decree: preserving desegregated schools and eliminating discriminatory treatment of Black students. The standard for modifying a decree so as better to achieve its goals is quite different from that which governs a defendant's request for the effective dissolution of the decree. Thus, plaintiffs' right to more equitable means of student assignment does not imply that the criteria for making the much more drastic change in the decree sought by the defendants have been established.

APPENDIX "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

ROBERT L. DOWELL, et al., Plaintiffs,	)	
vs.	)	CIV-61-9452-B
THE BOARD OF EDUCATION OF THE OKLAHOMA CITY PUBLIC SCHOOLS, INDEPENDENT DISTRICT NO. 89, et al., Defendant.	)	

DEFENDANT'S CONTENTIONS[1]

1. The objective in this desegregation case was to dismantle the dual school system which existed in Oklahoma City. The purpose of the 1972 desegregation decree was to correct the condition that offended the Constitution. No child was to be excluded from any school on account of race. The remedy was designed to operate during the interim period when remedial adjustments were being made to eliminate the dual system. The need for the remedy extended until it was clear that state-imposed segregation had been completely removed. When the Board's affirmative duty to desegregate was accomplished and racial discrimination through official action was eliminated, the Court found the school system unitary. The Court's unitary finding in 1977 signified the purpose of the litigation had been achieved. The dual system had been dismantled. The School District's continued adherence to fundamental tenets of the Finger Plan at all grade levels through school year 1984-85 further insured that all vestiges of prior state-imposed segregation had been removed. Today, after 13 years of implementation, the dangers prevented by the 1972 decree have become attenuated to a shadow. Now, the particular

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[1] Defendant's contentions, as well as the legal and factual issues stipulated to in the Pretrial Order, are framed in light of the mandate of the Tenth Circuit Court of Appeals. The Defendant Board does not want to be misunderstood as waiving its previous position in this case. With all due respect to the Court of Appeals, the Board continues to believe the analysis applied by this Court in 1985, and applied by the Fourth Circuit in *Riddick v. School Board of City of Norfolk*, 784 F.2d 521 (4th Cir. 1986), is the correct one.

school a child attends is not determined by race. The purposes of this litigation as incorporated in the 1972 decree have been fully achieved. The achievement of the purposes of the litigation constitutes a substantial change in conditions which warrants dissolving the 1972 decree.

2. The Finger Plan appropriately served its purpose during the interim period when remedial adjustments were being made to dismantle the dual school system. However, the plan was never intended to operate in perpetuity. After 13 years, demographic changes in Oklahoma City rendered the "stand alone" school feature of the Finger Plan inequitable. The greater the number of "stand alone" schools, the greater the busing burden placed on young black children. More "stand alone" schools meant less fifth year centers. With demographic change, the "stand alone" school feature produced hardship so extreme and unexpected as to make the decree oppressive. Such a substantial change in conditions is additional justification for dissolving the 1972 decree. At the very least, it warrants modifying the decree to accomodate [sic] the Board's 1985 plan.

3. The Board of Education's 1985 Student Assignment Plan, which calls for neighborhood schools in grades K-4, does not offend the Constitution. Nor does it affect the unitary character of the School District. The Constitution does not mandate that a certain degree of racial balance be maintained in public schools. Rather, it prohibits the assignment of students to schools on the basis of their race. The mere existence of some predominantly white or predominantly black schools in a community, without more, is not unconstitutional. A neighborhood school policy violates the Equal Protection

Clause only when its adoption is motivated by discriminatory purpose. The 1985 Student Assignment Plan was not adopted with discriminatory intent. It was adopted by a unitary school district for the purpose of avoiding the progressive inequity of the "stand alone" school feature, and for the purpose of enhancing academic achievement through increased parental and community involvement in the schools. The faculties at the K-4 neighborhood schools are racially mixed. The "majority to minority" transfer policy insures that no student is compelled to attend any school where children of the student's race constitute a majority. Today, the particular K-4 elementary school a student attends in Oklahoma City is determined by the housing grades 5 through 12.

5. Any residential segregation which presently exists in Oklahoma City is not a vestige of previous state-compelled segregation. The barriers which prevented black people in the past from living in many sections of the community have long since been removed. Today, blacks are free to move, and in fact have moved into most neighborhoods in this community. Where black families live in Oklahoma City is now determined by their preferences and socioeconomic status, not by the color of their skin. The same is true with other minorities. In 1987, Orientals, Indians, Spanish and blacks are dispersed through most sections of the Oklahoma City School District. They all have the freedom to live and attend school where they choose. Oklahoma City in 1987 is remarkably will integrated. The numbers of black people who continue to reside in previous unlawfully segregated neighborhoods have decreased over the years. The fact that

some of the previous unlawfully segregated neighborhoods continue to have a high percent of blacks living there today is not the result of any action taken by the Oklahoma City Board of Education. Those people live where they do by choice. State action, past or present, does not restrict them from living elsewhere. If it were not for certain pockets of residential segregation presently existing in Oklahoma City, Plaintiffs would not have the Board engaged in the present contest. Plaintiffs would not contest the neighborhood school plan if all neighborhoods were integrated. Yet, no compulsory desegregation plan implemented by a public school system can eliminate residential segregation regardless of the length of time it is in operation. Under Plaintiffs' rationale, this Court should continue to order the busing of young students in Oklahoma City indefinitely, until such time as racial balance exists in all neighborhoods in the city. Such action would be oppressive and totally unrelated to the objective of this desegregation case, which is to insure that no child of a racial minority is excluded by school authorities from any school on account of race.

6. Plaintiffs are not asking this Court to enforce the Finger Plan. Rather, Plaintiffs are impermissibly asking this Court to award additional remedial relief, which, for the first time in the history of Oklahoma City, would require the compulsory, busing of young white children in grades 1-4. Plaintiffs' contention that white children should share the busing burden now because blacks carried the burden in the past does not square with principles of equity. In light of the unitary status of the Oklahoma City School District, it is clear that Plaintiffs

may not seek this relief. Since this school district is unitary, it no longer has the affirmative duty to desegregate. Granting such relief would be impermissibly aimed at eliminating a condition which does not offend the Constitution. The Court of Appeals noted that as most Plaintiffs were limited to seeking the enforcement of the Finger Plan. The Board of Education contends that implementation of Plaintiffs' busing proposal would: (1) work extreme financial hardship upon the School District, (2) adversely affect its "Effective Schools" Program, (3) bring about another substantial wave of white flight which would tend to resegregate the School District, and (4) constitute an abuse of the Court's remedial authority.

7. The School District was declared unitary 10 years ago, and it remains unitary today. After more than 25 years of litigation, control over the schools in Oklahoma City should be returned to its Board of Education. Its [sic] time to turn our attention to effectively educating the children in this community.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS AT HEARING CONDUCTED JUNE 15-24, 1987

RECORD, VOLUME II

WILLIAM A.V. CLARK

* * *

[p. 45] Q. Were there any changes between 1960 and 1950 that's revealed in these maps?

A. Yes. The area of concentration, the area in which blacks were concentrated has increased, and there are a number of tracts with lighter tones in the school district, but perhaps most obvious was the increase in the north-eastern areas of the school district in which the proportions of blacks had increased during this period.

But, in general, between '50 and '60, although there was some spread, some diffusion, there was still a significant concentration of black households in the inner city – the east inner city area.

Q. In your study of this district, were you able to determine why such a large percentage of blacks were living in these tracts that are shown on the map in the dark olive color?

A. Well, in Oklahoma City, as in many other metropolitan areas, there are a complex set of explanations.

We know that blacks settled near the central cities, the [p. 46] downtowns, where there were jobs available, and certainly the downtown of Oklahoma City was very different in 1950 – in the 1950's than it is today when it was much more of the center of the city. The downtown has changed a great deal in the last 30 years. And there were jobs available, so that was one element of explaining that concentration.

Another, of course, is what we do know related to the preferences and information networks that black households moving to Oklahoma City would have other contacts and would tend to find housing nearby. The housing was less expensive in those central areas, often having been vacated by other families who had moved out.

And we must, of course, also note that in the 30's there were ordinances which had the – attempted to concentrate black households in certain parts of the city.

* * *

[p. 52] DIRECT EXAMINATION (CONTINUED)

BY MR. DAY:

Q. Doctor Clark, you mentioned that the concentration of blacks in the 50's and 60's was, in part, responsible for the state compelled dual school system being implemented in Oklahoma and also ordinances which required blacks to live within these tracts; is that correct?

A. I'd like that read back. I'm not sure that's exactly what we were talking about when we ended. We were talking about the ordinances and the effect of the ordinances.

Q. All right. Well you are also aware that there was a state compelled-dual-school-system –

A. Yes.

Q. – In Oklahoma City for many years?

A. Excuse me. If that's your question, I am aware of that.

Q. Now, after 1970, in your study did you note any changes in the demographic movement of black people in this community?

A. Yes. When you look at the maps for 1970 and '80, you notice considerable change from the maps in 1950 and '60.

Q. Okay. Now, in your investigation, did you review any local ordinances or state statutes which, in you opinion, affected where black people could live in the Oklahoma City area?

A. Yes.

Q. Would you briefly tell us about those local laws?

[p. 53] A. Well, when I found that there had been these ordinances in the 30's; 1933 and '34, which had been promulgated, even though I think they were unconstitutional, given other court rulings, I was interested to know what specific responses there had been. So I looked at some of the other material, and, of course, I think those ordinances were actually declared – I think "unconstitutional" would be the correct word – in the 30's.

But during the 70's, we – beginning, of course, in 1968 with the Federal Fair Housing Rules; these were followed, specifically, in Oklahoma in 1970 with the Fair Housing decision and that was followed with a number of ordinances during the 70's which were designed to make sure that blacks had access to public accommodation, that there couldn't be discrimination in the housing market, and these – there were several of these ordinances through the 70's, culminating in 80, I think, with

the Human Rights Commission that was set up there in Oklahoma City.

* * *

[p. 55] One of the reasons, if I may just give a little background, that I do so much of my research in Europe is that Europe keeps very detailed records on population relocation. They actually have information on point-to-point moves. The U.S. does not have very much of this data.

So when I found some of the data available in a report that had been done for the school board on actual relocations of black households, I was interested in mapping it to see whether or not it would tell us something about the patterns of change over time for this period in the 1970's.

Q. Well, tell us a little bit about that study that you found.

A. I found a study by Steven Davis, a study done by the – for the school administrative group. I don't know whether he did it for the school board or whether he did it for the research group. I think he was a member of research staff at that time.

And he laboriously took the printed records, – we didn't have at that time computerized material – he took the printed records for kindergarteners who lived in the area of the so-called fifth-grade centers, and he wanted to know, for the attendance areas of those fifth-grade centers, what had happened to those pupils that were being bused out of there over time. So he was interested in knowing three years later, in 1977/78, where were those

people that were in those [p. 56] attendance areas in 1974/5, where were they living three years later.

So he actually looked at the matrix of their moves between attendance areas. He asked, "can I find a name and address in the attendance area in the center, and now where were they three years later?"

And I was able to plot that data and present the record.

Q. I believe the record, the Davis study, is in evidence as defendant's exhibit 28; is that correct?

A. I don't remember the number. I did review it, but I could look it up. I think it is.

Q. Okay, if you would, please, just confirm that for us.

A. It is. It's defendant's – it's Steven Davis, an analysis of elementary school enrollment trends, department of technical services, research and evaluation unit, Oklahoma City Public Schools, and it's defendant's exhibit 28.

Q. And that is what you used to prepare the map from?

A. That's correct.

Q. I'd like to direct your attention now to defendant's exhibit number 7.

Doctor Clark, is exhibit 7 the map that you testified you prepared from the study that Mr. Davis did?

A. That's correct.

Q. Would you explain what you're depicting here in this map?

A. What I'm doing in this map is trying to express the kinds [p. 57] of changes that were occurring during the 70's for black households who were living in the inner city east area, which has – which was still an area of concentrated black households, and I'm showing, for the data that we had for kindergarteners – it is a limited sample – for kindergarteners, where those households relocated in that three-year period,

And for those who relocated but stayed within the district, I showed that as a curved band for 149 individuals who moved but stayed within the fifth-year center areas, and I showed a band moving out of the district, that is, names and addresses who could no longer be found, 209 of them moving to non-Oklahoma independent school district areas.

Q. What information did you use to determine that these students were classified as to non-ISD area?

A. I took the Davis result that there was neither a name or address in the district, and so we can make the assumption that they moved out of the district.

But, in addition to the 177 that he so identified in his report, I added another 32 names for which there was no address but the names were present, and put that in with that category.

That's a judgment call whether they should be within the two non-ISD's or to the 149 moving within the fifth-year center area, but in that my major concern was the relocation behavior of the blacks in the district, I wasn't that concerned about [p. 58] the judgment call between the two.

Q. Would you point out the significance of these arrows for the court?

A. Yes. I plotted only moves of two persons or more. There were a number of moves of a single individual, but most of them were to nearby areas. And this gave me a general picture, and I decided that was sufficient to make the point that we have, for example, three people going from the fifth-year center areas to Harrison, seven going to Western Village, –

Q. Now, is this – you say this fifth-year center area. You're referring to the east inner part of the city that was predominantly black?

A. Yes, but it's more than the area that was predominantly black, because half of that east inner city area to the north, schools like Longfellow and Dewey and Polk, back in 1960 had very small proportions of black households.

Q. And the movements that you're talking about of students are movements of black students and their families; is that correct?

A. Yes. These are residential relocations.

Q. All right.

A. I was saying that we have seven to Western Village, four households or students and their families went to West Nichols Hills, eleven from Dewey to Edgemere, four to Putnam Heights, and so on. Four to Rockwood, two to Shields Heights, three [p. 59] down to the Bodine area, and then on the other side we have some moves from the Garden Oaks area to Star and to Spencer and so on.

Now, this means that those families came from somewhere within that fifth-year center. It wasn't that they came from a specific school, though that also could have been mapped. But Davis did map those, and it was a rather confusing picture. It was hard to get a general feeling for the kinds of changes that were going on from his map.

Q. In this map where you show the arrows going out into the other parts of the school districts, at the base of the arrow you have a circle and a number. What does that number represent?

A. That's the number I've just been reading. That's the number of students and, one assumes, their families that residentially relocated from the east inner city area to one of the other attendance districts.

Q. Were you able to determine, from the data that you reviewed, how many students or black students actually moved with their families into attendance zones where they were being bused?

A. This was one of the concerns of Davis, and in his report he notes that, of all of the relocations, only one family could be identified as having moved to an attendance area that it had previously been bused to.

[p. 60] Q. One out of how many students?

A. Well, one out of about 350, something like that, of these – these kindergarten students.

Q. Do you have an opinion with respect to why the other families located where they did in the school district?

A. Well, during the 70's there was the beginning of quite a lot of movement of black households throughout the district, and they were moving, in many cases, to areas nearby the inner city concentration, to Edgemere, to Putnam Heights, or moving to areas like Rockwood where there was some public assisted housing. There were moving, of course, to areas that they sought as white households so, where they could improve their housing, buy houses, perhaps, rather than rent in the inner city area, the kinds of standard reasons that we know apply to people seeking to move and and to residentially relocate within the city.

Q. You did a map showing the census tract population in 1980, did you not?

A. That's correct.

Q. Is that exhibit number 4?

A. I believe so. Yes.

Q. Would you identify and explain that exhibit, please.

A. Exhibit 4 is, again, Oklahoma City, the Metropolitan area, with the percent black population by tract for 1980. Again, the red line indicates the boundary of the Oklahoma School [p. 61] District, and the shading is consistent with the other maps, from white, pearl, light yellows, light greens, to darker greens, with increasing percentages black with the heavier shadings.

Q. What percent black is located in these areas with the tan shading?

A. It's between one and ten percent.

Q. In your opinion, were there any significant changes in the location of the black population between 1970 and 1980?

A. Yes, there were.

Q. Would you explain those?

A. Whereas between 1960 and '70 we saw the considerable movement to the eastern part of the county, between 1970 and '80 we saw an increasing movement to the western parts of the city and the county.

Now, those light tan shadings, that is, they're still lower percentages than the percentages moving to the eastern part of the county, but, whereas, between '60 and '70 there was eastward movement, between '70 and '80 we now have westward movement as well, such that many, many tracts throughout the city have some black households ranging between one and ten percent.

* * *

[p. 65] Q. (BY MR. DAY) Doctor Clark, thus far we've been talking about the percent of black population in various census tracts in the area over time.

In you analysis, did you examine any of the actual numbers of black population living in these various census tracts over time?

A. I did.

Q. Have you put that information in chart form so we can use it in court?

A. I have.

Q. Where did you obtain the numbers and the data for this [p. 66] exhibit?

A. This data, like the other data, is from the census tract information.

THE COURT: What exhibit is this?

MR. DAY: Beg your pardon?

THE COURT: The number of this exhibit.

MR. DAY: It's 5-D.

Q. (BY MR. DAY) Doctor Clark, explain for us what exactly is demonstrated in this chart.

A. There has been some discussion of the concentration of black households in the east inner city area, and, in examining that data and plotting it, I was concerned that the percentages might give a misleading impression, in that there is still very – there are still very significant concentrations of black households in those inner city tracts.

Therefore, I wanted to look at the absolute numbers from the area that we've called the concentrated inner city area, that is tracts 13, 27 through 30, 38, and 79. I wanted to look at the aggregate or the raw numbers for those tracts.

Q. Would you show us the location of those tracts on exhibit number 4.

A. The tracts that I'm speaking of are the tracts here, 13, 28, 29, 38, 30, and 27.

Q. Go ahead with your explanation.

A. I was able to determine the numbers of the total popula- [p. 67] tion and the black population for each of those tracts and to show, to get right to the point, that, whereas in 1960, for example, to take just two examples, tract 27 had almost 2,700 blacks, in 1980 it had only 22. In tract 29 there was 3,684 blacks. In 1960 there were 447.

Q. You mean '80?

A. In 1980.

So that what we see is a significant change in the absolute numbers of blacks, of course, as that area has undergone demographic transition.

Q. What about tract 30 and 38?

A. Well, tract 30 went from 5,000 in 1960 to 853. Tract 38 went from 3,324 in 1960 to 912 in 1980.

Q. Were you able to determine the percent of the black population living in the metropolitan area which chose to live in the tracts that you've identified as of 1960?

A. Yes. By taking the 19- – taking the data for the total metropolitan area that was black, and then taking the proportion and summing up the number in these seven tracts and putting it over as a ratio, I was able to show that somewhat more than 80 percent in 1960 and in 1950 were in these seven tracts, but by 1980 it was less than 17 percent.

Q. Do I understand you correctly that in 1980 only 16.8 percent of the black population in Oklahoma City resided within these tracts?

[p. 68] A. In Oklahoma City Metropolitan area resided in these tracts.

Q. And that in 1960, 84 percent of all blacks in the metropolitan area resided in these tracts?

A. That's correct.

Q. Have you personally been to these areas of this community?

A. Yes.

Q. In these tracts where we have a dramatic drop in numbers, what do you see when you drive through?

A. Well, I was interested in going to these areas, given the significant change in population, and some I could work out just from examining maps. For example, I-40 and the 35 interchange certainly had a dramatic impact in tract 29.

But what we have, of course, is an area that was undergoing land use transition, there were developments of institutions in the area, the freeway system, and now the Broadway extension is having a considerable impact as further transportation developments in the area require the clearing of residential use in that region.

Q. Does the census data show the amount of population turnover within a given tract?

A. Yes. You can get a general idea of turnover from the census tract data.

* * *

[p. 71] mobility, and we find that the mobility rates have dropped on average, oh, nine percent over that period,

and you can see it specifically in individual tracts. But the turnover rates in 38 and 30 are still quite high.

Q. What's the significance of that high turnover rate?

A. Well, the significance to me is that there's a fair amount of population change going on in the area. It's not a stable area. People are coming and going. People are choosing to live there and to move away from there.

Q. In your analysis of this school district, did you become familiar with the total black population in the community over time? The numbers?

A. Yes.

Q. Do you have an opinion as to where the blacks that were previously living in these tracts went which would account for this substantial drop in numbers from '60 to '70 to '80?

A. Well, if you look at the charts and the maps that I've prepared previously, we have an expansion of the black population throughout the region. Some of them certainly came from this region. I'm not – certainly not saying they all came from here, because this just says whether or not you're living in the same house. You may have moved down the street, and often people do that around the block.

But we know that the black population expanded, we know it was living throughout eastern and increasingly western parts of [p. 72] the city and the county. Some of that population came from the inner city area.

Q. Doctor Clark, I'd like to direct your attention now to defendant's exhibit number 6, which is in the book in front of you there, and I would ask that you identify and explain that exhibit, please, sir.

A. This is a chart which gives data on the population growth/change in the Oklahoma City Metropolitan area, and it is an attempt to look at the kinds of demographic changes that were going on in a very broad-brush approach.

And I divided the district that I was concerned with into – the Oklahoma City School District in three parts, then Eastern Oklahoma County, Northern Oklahoma County, Western Oklahoma County, and part of Canadian County.

I didn't do the total metropolitan area. I though this would be sufficient to examine the kinds of changes going on in the region between 1960 and 1980.

Q. And what sort of change did you note in that period of time?

A. I presented the data in the chart for 1960 to '70, for '70 to '80, and 1960 to '80 as an aggregate, and I think the points can be made quite simply. There was, in the Oklahoma City School District in the major – the central core, the largest area, a loss of about 40-, almost 43,000 whites, and a gain of 13,000 blacks.

* * *

[p. 76] Q. Were you able to determine how many black families actually moved into an attendance zone where their child was being bused?

A. Yes. I also asked for that part of the run to be done, and there were eleven families who had relocated to attendance areas that they'd previously been bused to.

Q. And approximately how many families relocated in attendance areas other than those where their children were being bused?

A. Approximately 250, but we'd have to add it up exactly.

Q. Do you place any significance on that figure?

A. Well, I was interested in this, because I have been examining the issue of whether or not busing or moving children from one attendance area to another will integrate the residential area, and I think this is evidence that it does not integrate the residential area. The residential areas change [p. 77] from a long series of decisions made by individual families, and simply busing a child from one attendance area to another will not, in and of itself, integrate that residential area.

Q. Do you have an opinion as to why these black families were moving into other areas of the school district during the 80's?

A. Yes.

Q. What is your opinion?

A. I think they're moving there for the reasons that families move in general. They're moving there because they could own a house, perhaps, instead of rent, or they could find a house they could afford; they were moving there because there were other families of similar socioeconomic status; they are moving there for reasons of

preference, they liked the area; or, in the case of Rockwood, they were moving there because they could get housing that they could afford, publicly assisted housing.

* * *

[p. 82] Later I was asked by the U.S. Commission on civil rights to attend a consultation and hearing and to write a paper for that hearing, which I did, and it was published as part of a proceedings.

I then, with the permission of the commission, revised that paper, and it was accepted for publication in population research and policy review.

Q. When did the commission on civil rights ask you to do the study and present your findings to them?

A. That was in the fall of 1985.

Q. I'd like to direct your attention to defendant's exhibit number 10 and ask you if that is a true and correct copy of the article on residential segregation which you originally did for the U.S. Commission on Civil Rights.

A. It is, with the proviso that in preparing the paper for publication, part of the article that was presented to the U.S. Commission on Civil Rights is not included in here, and, of course, it's been subject to considerable revision with peer group review and editorial input. But it is substantially the same.

* * *

[p. 84] And I began work on trying to assess the relative role of each of the many factors that had been thought to influence patterns of residential neighborhoods in cities, and the request from the civil rights

commission came at an opportune time, because I was able to take the period of my research and review a large number of studies and put them into a context, and was able to show in that paper and in the published paper that we have what I believe are a set of factors, which includes economics and housing affordability and income, preferences and social relationships, what I call urban structure and structure of cities, and elements in the past of discrimination. That these four groupings summarize the different things that have been at work in the cities to influence the patterns of residential separation.

Q. How about current private discrimination? Do you find to any extent that is one or a part of the factors you must consider when you're determining the causes of residential segregation?

A. When you say "current," you're talking about the present time, and we know that private discrimination in the past was a factor in accounting for patterns.

But currently the work that's ongoing, and I report two surveys that were done in the civil rights paper where specific [p. 85] questions were asked of black households about whether they had been discriminated against on the basis of race in attempts to secure housing and who was responsible, and something on the order of two to three percent of the respondents indicated that they had – they had been subject to private discrimination.

So it is a much smaller factor today than it was 30 years ago.

Q. Addressing the causes of residential segregation today, what part did you find that personal preferences played?

A. In looking at the various factors, again beginning with some studies by sociologists in the 60's, people were interested in the question of why you got some of these concentrations and to what extent what people desired was a basis for that, and the early studies established quite quickly that what we've called the gap between black and white preferences is quite important in understanding patterns.

If you ask whites the kinds of neighborhood compositions that they would like, their preferences, they tend to report in the range of zero to 20 percent minority, depending on the city, – I say "minority" because it may be black or Hispanic – and perhaps in the range 80 to 90 percent white. We find that 80-20 is a commonly-expressed view for white households. Black households commonly express a view of wanting 50-50 neighborhoods, 50 percent blacks, 50 percent whites.

And so we have this separate – this distinct view of the [p. 86] kinds of neighborhood compositions that whites and blacks want, and that, of course, leads to a gap in the preferences such that it's very difficult to maintain stably integrated neighborhoods.

Q. Today what part does economic status play?

A. I've – I've always felt that the attempts to down play the role of income in terms of explaining patterns of residential separation have been perhaps too great. I think income is a very important element, and we see it

in the gains in black incomes that were made in the 70's and the 60's. Given those gains, we see it being expressed in the spatial pattern of black households.

But it's true that you can find cheap housing in the suburbs as well as in the central cities, so it's not a complete explanation, and I like to turn beyond income to looking at assets.

The fact that white households, in general, have somewhere on the order of ten times the assets that black households have, independent of house value, is a very powerful explanation in terms of the inability in the past for black households to enter the homeowner market simply because of the down payments required.

So these are very important elements of understanding why economics does play a role, just the ability to afford homeownership, and, of course, the suburbs are largely – were [p. 87] largely, I should say, because there are changes going on – were largely homeownership. So we have some understanding why we don't find more blacks in the suburbs in the 50's and 60's.

Now, during the 70's and into 80's, we're seeing more black suburbanization.

Q. And did you find that true in your study of the Oklahoma City School district?

A. I would say that the movement of black households into the Eastern Oklahoma – Eastern Oklahoma Metropolitan Area is an expression of that – to some extent, that spread to suburbs outside of the city.

Now, we have do [sic] be careful, in that the city of Oklahoma City is a very large city unit. Many cities are

smaller, and so we talk about suburbs and cities. But, of course, there are suburbs within the city of Oklahoma City.

Q. How does urban structure affect residential separation?

A. Urban structure is a term we use to describe the relationships of cities and suburbs, the patterns of transportation, and the behavior of individuals.

For instance, we know from a large number of studies that households tend to move nearby. Your prior address is a very good indication of where you're likely to move to. If you're located in a particular – excuse me – area of the city, it's a good indication of the fact that you'll move somewhere nearby. It isn't always true or for every individual, but, on [p. 88] average, people tend to move relatively short distances.

That element of the urban structure explains why we have patterns of growth such that the spread is often from a previously concentrated area.

Q. Doctor Clark, do you have an opinion as to whether or not today there are local or state governmental barriers which compel black people to reside in the tracts that we've been talking about in the east inner part of the city?

A. I do.

Q. And what is your opinion?

A. I think if you review the factual information that I've brought together; if you look at the extent to which black households live throughout the Metropolitan Area,

the fact that a very small proportion of the total black population lives in that concentrated area, something around under 17 percent; if we look at the rates of turnover, the fact that many of those people are no longer living in the same house, so they have been expressing residential decisions to live in other houses nearby; if we look at the movement of black households from the inner city district via the maps of residential relocations; if we consider that, in addition to the affirmative actions taken with the fair housing laws of 1968 at the national scale, 1970 at the local scale, I come to the conclusion that there are not barriers affecting the concentration of black households in the inner city area.

* * *

[p. 93] CROSS-EXAMINATION

BY MR. CHACHKIN:

Q. Doctor Clark, on Exhibits 5-D and 5-E which are the charts showing population change for selected census tracts in the northeast portion of Oklahoma City, why did you select only these tracts and not additional tracts in the northeast section of the city?

A. They were the inner city tracts that had the greatest concentrations of black households in 1950 when I looked at the map, and, as that was of some concern in this litigation, I focused on those tracts.

Q. Do you know whether these tracts that you have selected encompassed the school attendance areas for all or most of the schools that were more than 90 percent black in 1972, just before entry of the court's order requiring the implementation of the Finger Plan?

A. They probably encompassed a large number of those schools, but there were some areas that had a large black population to the north of these tracts that, by 1970, would have had schools [p. 94] with large numbers of blacks.

So, to answer your question, it probably does not accomplish an overlap with all of the schools.

Q. And you haven't studies the tracts that were left out of these exhibits to see if they suffered the same proportion – excuse me – proportionate diminution in absolute numbers or whether they actually increased in the numbers of residents between 1960 and 19___ – or 1950 and 1980; is that correct?

A. I did examine those, and those tracts increased in the numbers of blacks.

Q. But they're not reflected on here, so this is a subset of the area in which more than 90 percent black schools were located in 1970 that coincides generally with diminishing population trends?

A. The aim of the analysis was to look at the previous concentration of black household residentially in 1950 and 1960, not the 90 percent black schools. That would be a different analysis.

* * *

[p. 105] Q. Now, Doctor Clark, you mentioned the importance of personal preferences in explaining the pattern of residential movement, and you referred to surveys indicating that whites generally wanted to live in areas that were 20 to 25 percent black, something on that order,

and black respondents indicated they would prefer to live in areas either 50-50 or slightly a majority black; is that correct?

A. That's generally correct. Yes.

Q. Haven't you also written about the strong disinclination on the part of whites to move into established black residential areas?

A. That's correct.

Q. How would you describe that – the strength of that disinclination?

A. I believe when neighborhoods reach a certain percentage minority, it may be 25, 30 percent, we find that not only do some white households continue to leave that, but the neighborhood changes as much because white households do not move into those areas. But there's a very, very small proportion of whites households that will move into neighborhoods that are heavily minority.

[p. 106] Q. So that we – is it your opinion that one would not expect, based on those surveys and your knowledge and the opinions you have expressed, that whites would move into the established black residential areas in Oklahoma City after 1950 or 1960, whatever point we want to take and look at the areas of concentrations?

A. Generally, that's correct.

Q. And does it not therefore follow that, to the extent that past discrimination was a factor in establishing concentrated minority residential areas, that those areas are unlikely to change because of the antipathy of

whites to moving in unless and until their black residents move somewhere else?

A. I think that you would have to agree with that, given what I've testified. Yes.

Q. And so to bring that down to the issue that's of concern in this case right now, the black schools serving grades one through four in the northeast quadrant of Oklahoma City are unlikely to change until all of the black families living in that area move elsewhere in Oklahoma City in your view.

A. No, that isn't what I said. I think you have to be much more complicated, much more careful when you go to shift over to schools, and you have to be careful about the kinds of neighborhood compositions you're talking about.

For example, if a number – if enough of the black families take advantage of the majority-to-minority transfer [p. 107] plan, which I think is an important part of the plan, you certainly can have blacks moving to other schools, and those schools can be reduced, and it may be that there is the possibility for developing other alternatives to try and attract whites to move to those schools voluntarily. I mean, those kinds of things can influence the school composition independent of the residential composition.

Q. Apart from those matters, as long as school attendance is determined by residential zones, such as those which have been drawn which overlay areas of established black concentration, you wouldn't anticipate white families moving into those areas?

A. I would not anticipate white families moving in. No.

* * *

[p. 111] Q. Now, Doctor Clark, if I can return to the subject of preferences, and particularly the white disinclination to move into areas of minority residential concentration.

In your view, are those preferences related to prior official discriminatory policies of governmental agencies, both to their tangible and symbolic value?

A. I would say that there is probably some effect of the past, but how much, in my opinion, –

Let me restate that.

But the amount, in my opinion, is probably small, because we see other ethnic groups, and in my own city is a good example. Of these other ethnic groups, like the Vietnamese, the Koreans, the Japanese, having quite high levels of preference for people of their own race. The Hispanics also.

So I think that these preferences are reflecting something about people's social needs, and they're not simply ascribed as the result of prior discrimination.

Q. But you don't exclude prior discrimination as a factor leading to the development of the private preferences that you've spoken and written about?

A. No, I would – I would be less than an honest academic if I didn't concede that there may be an element of that

* * *

[p. 113] When I'm using the word preference, I'm talking about people's desires for a certain combination.

Clearly, preference can also shade over into prejudice, that is, not wanting to live with some other group.

So I distinguish them, for my purposes, as saying preference is a positive function that you prefer to have a certain combination, prejudice is when you talk about not wanting something, and that's the way I distinguish the two terms.

Q. Well, when you used the term "private preference" today, particularly in response to Mr. Day's questions, did you mean to exclude from your answers, therefore, private prejudice? Were you speaking only of preference?

A. No, I think the [sic] do – when we [sic] talking about the terms, we're talking about – when I use the term preference," I include that combination of elements, preference and prejudice, but I'm not talking about private discrimination, which is something quite distinct. And, of course, even though it's private, not showing a house to a black family or another minority family is, of course, illegal, and it is discriminatory practice.

* * *

[p. 115] REDIRECT EXAMINATION

BY MR. DAY:

Q. Doctor Clark, in your opinion can a compulsory or voluntary school desegregation plan eliminate residential segregation?

A. No, it cannot.

Q. In your opinion, is there anything a public school district, standing alone, can do to eliminate residential segregation?

[p. 116] A. I don't believe so, although, when you say "anything," – but I don't believe that I've seen any instances where a school district has been able to change the residential patterns.

Q. Are you aware of any city in the United States where a compulsory or voluntary desegregation plan has brought about the elimination of residential segregation in that community?

A. I'm not aware of any.

* * *

FINIS WELCH

[p. 122] Q. Have you published any papers on the subjects of race discrimination or school desegregation?

A. Yes, I have.

Q. Would you tell us briefly about those?

A. I have published primarily empirical papers, a few theoretical papers, on race discrimination in economic outcomes. I've conducted very, very many empirical studies of income differences both between blacks and whites, between men and women, and between Hispanics and Gringoes.

Q. How about in the area of desegregation?

A. In the area of desegregation, I have just authored one study entitled "new evidence on desegregation" for the U.S. Commission on Civil Rights.

I have another paper accepted for publication in November in Sociology of Education. It's called "a reconsideration of white enrollment responses to desegregation plans."

Q. Have you qualified as an expert witness in any race discrimination or school desegregation cases?

A. Yes, I have.

Q. Would you tell us about those cases.

A. I have been qualified in various matters and have testified about 16 times where I was qualified as an expert. They have ranged most recently from a school desegregation [p. 123] case, the Little Rock School District v. Pulaski County Special District.

Before that I testified in an OFCCP case involving charges of race and sex discrimination in employment against Harris Bank.

Earlier, in the Denver School Desegregation case, on a Unitary hearing.

And so on. Very, very many employment discrimination cases.

Q. Was that the Keyes case in Denver?

A. It's the continuation of the Keyes case. Yes.

Q. I'd like to direct your attention to defendant's Exhibit 27 in the book there in front of you, and ask you if that is the study that you just mentioned that you had completed for the U.S. Commission on Civil Rights.

A. Yes, it is. I have my own copy.

Q. Would you explain to the court the scope of that study?

A. The primary intent was to establish a database that would be both current and extensive about school desegregation programs. We considered 125 school districts, including most of the largest districts in the Country, for a period spanning roughly 20 years, having enrollment data as recently as possible. We examined a total of slightly less than 300 school desegregation plans that were adopted over this period, or implemented, at least, within these districts.

* * *

[p. 127] Q. (BY MR. DAY) Doctor Welch, I'd like to direct your attention to table 13, page 51 of your study, and ask you if on that page you make some findings with respect to the state of desegregation in the Oklahoma City School District over time.

A. Yes, I do.

Q. And tell us about those findings.

A. Well, what I do, within the 125 districts considered in that table, I simply list the districts that had – that experienced the largest change between the beginning and the end of the data, the most recent data considered, in an index of the amount of racial segregation among schools in the district. The index used is the index of dissimilarity.

Q. Will you explain what the * * * dissimilarity index is?

A. It's a measure of how unevenly distributed the populations are across schools. It's a two-group index.

In this case, the index refers to whites versus people who are not white, and the idea, basically, is to say, "Given the racial composition of the school, suppose, as a hypothetical, that the school district were perfectly segregated so that no white attended school with anyone who was not white and no-one not white attended school with a white, what fraction of the population would have to be redistributed, reassigned, so that every school moved to exact racial balance?"

[p. 128] And with that as the norm, as an outer bound, then we asked, "given the existing patterns of assignments among schools, what number of students or what fraction of students would have to be reassigned such that each school has the same racial balance, the district average, and we report the second number as a fraction of the first.

So that if the dissimilarity index is zero, it means that every school in the district has the same racial composition, and if it's one, it means the district is fully segregated.

Q. So to make sure I understand, the closer the index number is to zero, the more integrated the school district?

A. Yes, the less dissimilar.

Q. The closer the index number is to the number one, the more segregated?

A. It's perfectly segregated at one. That's true.

Q. Now, in this study, did you also make use of the exposure index?

A. We did. Yes.

Q. Would you briefly explain the meaning of that index, please?

A. The Exposure Index is an alternative index of how well integrated a school system is. As is true of the Dissimilarity Index, it's a two-group comparison index, and throughout this report for the civil rights commission, the two groups were whites versus others.

[p. 129] The Exposure Index simply computes, for one group – in the case of this report, the minority group – the fraction of classmates who are white, on average, amongst all schools attended by minorities.

Now, a property of that index would be that if the schools were perfectly segregated, exposure would be zero, because the proportion of classmates who are white by a minority would be zero.

If the school system were perfectly integrated, every school had the same racial balance, then the Exposure Index would be the fraction of students district wide who are white, and if there was less than perfect integration, it would lie somewhere between the two extremes, zero at perfect integration, and the district wide percentage who are white at perfect integration.

Q. Now, did you in your study use these indices to measure the states of desegregation in the Oklahoma City School District as compared to that in the other 124 districts you analyzed?

A. We used the Dissimilarity Index primarily as a vehicle for examining school districts through time. Table 13 on page 51, as we have discussed, is one that simply takes some extreme districts and says, "which districts experienced the largest change over the – over the period of time?"

But we're not trying, typically, in this study to compare one district and say, "this district is particularly well [p. 130] Integrated while the other is not," so much as saying "what are the sources of change within districts?" And "What are the plan types that led to the sources of change?"

We do not use the exposure index very intensively in the study. What we do at the end of the study is observe – is observe that many of the indices that could have been used typically agree in their main conclusions, and we've gone primarily with the dissimilarity index.

We then state exceptional cases and count them and refer to them for some particular interest associated with the problem of resegregation that is much discussed in the literature that's associated with exodus of white students from schools moving into other districts or to private schools, and there's been a lot of discussion in the literature speculating that some of these reactions have been so violent that resegregation is actually occurring.

And what we do it divide districts into categories and say, in a limited number of cases, resegregation perhaps is an issue. We don't attempt a definitive study, but we think in most of the cases we can rule it out out of hand.

Q. I'd like to direct your attention back to table 13 on page 51 and ask you specifically what your findings were with respect to the Oklahoma City District when compared to the other 124.

A. We find that, among the 125 school districts, the Oklahoma [p. 131] City Public Schools experienced the eighth largest reduction in the index of dissimilarity, the eighth largest change in overall integration.

Q. Do I understand correctly that, out of 125 Districts, the Oklahoma City District was in the top eight with respect to the amount of change which was brought about due to the implementation of the desegregation plan?

A. Clearly, the pattern in Oklahoma City is with the implementation of the finger plan, and the amount of desegregation that was accomplished over the full period would place it eighth in the list of 125 districts that we examined.

* * *

[p. 132] Q. And over what period of time, specifically, did this study involve the Oklahoma City School District? I think we've estimated that previously, but if you could give us –

A. I did look back, and It's '68 through '82. I had data –

The data source for the Oklahoma City Schools is something known as the OCR DATA. I collected data from the Oklahoma City Schools, but they were from membership records, and gave only a two-way race breakdown of blacks versus non-blacks. And, since when

were working with a different racial breakdown, we had to go only with the OCR DATA, and, at the time this report was finished, the 1984 OCR tape had not been distributed.

Q. So that study then would not show the dissimilarity in the Oklahoma City School District after implementation of the K-4 Neighborhood School Plan in 1985.

A. It would not.

* * *

[p. 136] Q. So your projections would not include socioeconomic factors, would they?

A. To the extent that socioeconomic factors are involved in changes '72 through '86 they do, but only as they are related to the evolution of time. We do not look specifically at socioeconomic factors.

Q. Let's say, for example, a big plant moved into a certain part of the community, a big industrial plant, that brought about a change in the racial composition of the neighborhood.

You're not forecasting that sort of a thing, are you?

A. If a big plant had moved in, say, toward the end of the data in 84/85, then we would project a trend that would include a continuation of that growth.

Q. Okay.

A. We do not anticipate the arrival of plants where they have not been in the past.

Q. Okay.

A. It's a smooth evolutionary projection.

Q. These projections then are strictly based on past trends if they continue into the future?

A. That's all it is. It's just an extrapolation.

* * *

[p. 143] A. Yes. It would be between 45 and 46 percent black.

Q. And what is it presently? Do you know?

A. This year – It varies across data sources. For this data It's 39.3 percent.

MR. DAY: I will reserve offering exhibit 14 until Mr. Chachkin has the opportunity to cross-examine.

THE COURT: Very well.

Q. (BY MR. DAY) Doctor Welch, thus far we've been discussing the racial composition of the students living in the various attendance areas in this district.

In your study of the Oklahoma City System, did you also examine the numbers of black and white students enrolled in the Oklahoma City School District over time?

A. Yes, I did.

Q. Would you explain for us the scope of that study?

A. I simply looked at alternative data sources that I had, and looked both at the number of students and the race composition of students on an annual basis from 1969 forward.

Q. And what data sources did you use?

A. There were various data sources used. I used the membership records, which give membership on a school-by-school basis. These are unlike the assignment records that also show the zone of residence as we've been referring to here.

The membership records have – well, that's it.

[p. 153] These numbers are put into percentages then in the lower panel, and they show that, for example, over the period 1971 – excuse me – 1969 through 1986 that the fraction of students district-wide who are in this category that I would call "Other Minorities," moves from four to thirteen percent. The fraction of people who are black moves from 22.7 to 40 percent. The fraction of people who are white moves from 73 to 47 percent.

Q. Would you please identify exhibit number 21.

A. Okay. Exhibit 21 is something that's taken from the 1970 and 1980 census. This particular exhibit is drawn from STF-2. It's a summary tape file. That refers to a full census to a hundred percent of the respondents in the 1970 and 1980 censuses.

What we've done is identify the Oklahoma City SMSA, the metropolitan area, and the top panel refers to people of all ages. We then –

By the way, this is – the entire table, exhibit 21, refers only to the white population.

Q. Now, when you – on this table it says SMSA. What does that mean?

A. Standard metropolitan statistical area. People identified by the census as living in the greater metropolitan area in – whose central city is Oklahoma City and it's named after its central city.

* * *

[p. 173] Remember, when the dissimilarity index decreases, things are becoming more balanced. When the exposure index increases, things are becoming more balanced. They are a little different to read.

The exposure index begins at .145, so it says, "Of Students enrolled in Public Schools, that blacks live, on average, in zones where 15 percent of students enrolled and living in that zone are white as of 1972. That number has doubled by 1986 to 29.

Now, notice in 1972 about 78 percent of all the students were not black. So if we had had full balance in 1972, the average black would have lived in a zone where 78 percent of the students were not black.

By 1986, 40 percent of the students were black, 60 percent were not black. So for full balance, the average black would have lived in a zone where 60 percent of the students were not black.

So we have had this drop from roughly 80 to 60 percent of the students who are not black, and, even so, exposure – the population has decentralized in a way, so that exposure of blacks to persons who are not black in the same areas has doubled. It's gone from 14.9 percent to 29 percent.

Q. Did I understand you to say that the drop in the dissimilarity index and the gradual increase in the exposure index over this period of time shows that there was more [p. 174] balance, racial balance in these neighborhoods?

A. That's right.

* * *

RECORD, VOLUME III

RECORD, VOLUME III

FINIS WELCH

[p. 187] Now, the comparison here that's interesting is the 1985 comparison of Neighborhood Elementary Schools with a dissimilarity index of .56 versus the 1971 comparison with neighborhood schools with a dissimilarity index of .83.

And what has happened, or course, over the period, is what we were referring to at the start when we looked at exhibits 11, 12, 13, and 14. The increased residential integration of the city has resulted in a much lower level of dissimilarity today associated with neighborhood schools than was – than existed in 1971.

* * *

[p. 192] Q. In your analysis of this case, doctor Welch, did you have the opportunity to compare the degree of desegregation in the Oklahoma City School District with other comparably-sized school districts in other parts of the country?

A. Yes, I did.

Q. Briefly tell us what you did in that analysis.

A. Well, the idea was exactly as you've described it. I wanted to look at comparably-sized – not school districts so much as urban areas and to look at the central city district within them.

So what we did, Oklahoma City, in the 1986 state Metropolitan Data Book, is ranked as the 39th largest metropolitan area in the country, and so we identified that 24th through the 56th largest metropolitan areas, that

would be those smaller than and larger than, we took a total of 32, excluded Honolulu –

Q. Did you prepare a chart showing your findings?

A. Yes, I did. All I did for these districts is go to the Office Of Civil Rights Data, take the central city district, and use the most recent data I could find in the OCR data and computed the dissimilarity index, and that's in exhibit 38.

MR. DAY: Ms. Jones, would you put up Exhibit 38 for the court.

[p. 193] A. The districts are presented in rank order of the Dissimilarity Index –

THE COURT: What's the number of that exhibit?

MR. DAY: 38.

THE COURT: Okay.

A. – In rank order of the dissimilarity index, descending, with Columbus, Ohio, having the lowest degree of dissimilarity. The right-most column refers to the year in which the data are taken.

For most of the districts that's 1984, which is the most recently available OCR tape. You will noticed for Norfolk, Virginia, it's 1986. That's because Norfolk changed its plan went back to a neighborhood system recently, and the OCR data for 1984 did not capture that change. So we got membership data for Norfolk, and it's for 1986.

Otherwise, in some cases we have 1982, because the OCR '84 survey was not as extensive as '82, and some of the districts weren't covered, and in one case for Scranton, PA, they do not appear after 1978, and we had to go all the way back to that period.

In general, Oklahoma City is about the middle of the pack of the districts considered with – it has 39.3 percent black, with a dissimilarity index, as of 1986, the most recent date, of 38.9 percent.

Notice, for example, in comparison to Oklahoma City, we [p. 194] have Tulsa, which is a slightly larger school system, and it has a dissimilarity index of 54 percent from the OCR data in 1984.

Q. What does that tell you compared to Oklahoma City?

A. That black students and persons who are not black – It's a black-versus-non-black comparison – were distributed in 1986 more evenly among schools in Oklahoma City than is true in 1984 for Tulsa.

Q. Now, the data that you've used for the Oklahoma City District, do I understand correctly that that shows the dissimilarity index in this district after the neighborhood plan was implemented?

A. That's right, in the second year after implementation.

Q. Okay.

A. That is, it's the membership records as of the fall of 1986, the current academic year.

Q. So then even with the neighborhood plan in place in Oklahoma City, the students in the schools are more desegregated here than they are in Tulsa?

A. There's better racial balance here than in Tulsa.

Q. Would you –

MR. CHACHKIN: Excuse me. Your Honor, I'd like to make an objection to this line of questioning, and I am going to object to the introduction of the exhibit.

[p. 195] I think the relative dissimilarity indices in Oklahoma City and other school districts around the country is of no relevance whatsoever to the questions before this court. This case concerns Oklahoma City and whether or not a unitary school system was achieved and is being maintained, and I think the constitution and what the constitution requires depends upon the circumstances in Oklahoma City and not some comparison with a group of school districts around the country, some of which may have operated dual systems, some of which may not, and may be subject to all kinds of different legal requirements. I just don't think this has any relevance to the issues that are before the court.

THE COURT: Thank you.

Mr. Day, what's your response?

MR. DAY: Your Honor, we feel that it is relevant and that it – it will be helpful to the court to know the degree of desegregation and racial balance which has existed in the past in Oklahoma City and what exists presently in relation to other comparably-sized school districts.

I think that the objection that Mr. Chachkin has could be best addressed through his cross-examination of this witness.

THE COURT: It seems to me like it might show some parallel or relation to school boards in their operation of their school system; that is, whether or not the school board of Oklahoma City is less attentive to the problem or more [p. 196] attentive to the problem than others.

So the objection will be overruled, and you may go into depth with your cross-examination if you care to do so.

Q. (BY MR. DAY) very briefly, Doctor Welch, would you explain what's shown in each column of that Exhibit?

A. Surely. Here I have just listed the name of the Central City in the metropolitan areas. They're the names that you recognize when you think of the metropolitan areas.

Q. And how did you select those particular cities? You mentioned earlier that it was within –

A. It's described here. I think there's a slight error, actually, in this footnote. But the data source and the method of selection is described in the first footnote.

It says, "based on 1984 SMSA –" Standard Metropolitan Statistical Area "– population reported in the 1986 state and Metropolitan Data Book. It includes the 24th through –" and it says "the 55th," and it should say "the 56th" "– largest SMSA's, excluding Honolulu." Oklahoma City is ranked 39th.

Q. Well, why did you select the 24th through the 56th largest Metropolitan Area?

A. Basically, we started with the observation we wanted comparably-sized metropolitan areas, and we started with the observation that Oklahoma City was the 39th, and so we took 15 smaller and 15 larger.

* * *

[p. 216] Q. I direct your attention to defendant's exhibits number 68 through 75, doctor Welch, and ask you if, in fact, those are the school research department studies on stand-alone schools that you said that you had reviewed.

A. I reviewed all of them. I want to check, there may have been some others, as well, but I did review 68 through 75. Yes.

I have something marked as 78 which I also examined. Yes, it's 68 through 75 and then 78.

Q. All right. Now, did you analyze the attendance areas in the Oklahoma City School District in 1984 that qualified for stand-alone status by virtue of the racial composition of the area?

A. Yes, I did.

Q. Did you prepare a map demonstrating the findings in that study?

A. Yes. It's marked as Exhibit Number 88.

Q. Is Exhibit 88 the map you prepared on the stand-alone schools in '84?

A. Yes, it is.

[p. 217] Q. Would you explain that exhibit, please.

A. These are areas that we have marked attendance areas that we have marked as being eligible for stand-alone status, and all we did is to take the areas that were, for a district-wide average of 35 percent, within plus or minus fifteen percent black and identify them. The areas that are marked in this blue color had greater than 50 percent black, and, therefore, would have been uneligible – ineligible for stand-alone status.

The one area marked with white, the star area, was ineligible for being out of compliance. It would have needed to have been in compliance for two – the two most recent previous years, and was not. It was not stable racially.

The areas marked in yellow are ineligible for having too low a proportion of blacks.

And then the areas in the central color that are marked in the green color, according to our calculations, would have been eligible for stand-alone status. I believe there are twelve of them. Three were already stand-alone, and there were an additional nine areas that would have been eligible under this criterian.

The Exhibits 68 through 75 and 78 that we've talked about are really a series of memoranda that make alternative calculations that consider whether you would go – use the K-through-four stand-alones, K-through-five, the implication for [p. 218] building capacity, and what would happen under alternative rules under the JC policy for racial balance to the feeders that might be coming into

an area and where these people might possibly be reassigned. They're concerned much more with the practicalities of implementing.

This is a lot rougher and just says, on a hard-nosed view of percentages, "What is the Geographic pattern of eligibility?" and, of course, you see pretty much what you would expect, and that is the general diffusion from the Northeastern quadrant, where the black population had been concentrated, to adjacent Quadrants, and that's something that we had noted earlier with residence patterns. But you see here the eligibility for stand-alone status.

Q. And what percent black did a neighborhood attendance area have to be before it could qualify for stand-alone status?

A. It had to lie between 20 and 50 percent black.

Q. In your study, did you determine if the number of residential zones that qualified for stand-alone status in 1984 had an impact on any of the students in the district?

A. Yes, I did.

Q. Would you explain how?

A. Well, the – I mean, the main purpose, actually, of these planning documents that we've talked about and the thing that's pretty obvious is students who would have moved, particularly into the areas that were in the 25- to 30-percent black range, [p. 219] under existing assignment plans, would have had to have been bussed further into the areas out here had these eligible areas, in fact, become stand-alones.

The other thing that was a concern and you can see is that there's a real possibility that some of the Fifth-Grade Center Schools, if we had stayed under the old finger plan and just taken the schools that were eligible for stand-alone status out, some of the Fifth-Grade Center Schools that were concentrated here would at least have been pressed to close, would have fallen at least have been pressed to close, would have fallen below, in terms of enrollment, the policy guidelines for school closure.

Q. Is that because, if a school becomes a stand-alone school, it reacquires its Fifth Grade?

A. That – that was the finger plan provision, that a stand-alone school would be a K-through-Five School, and the students from that attendance area would join the busing plan at sixth grade.

Q. In your professional opinion, as of 1984, had demographic change in Oklahoma City rendered the stand-alone school feature of the Finger Plan inequitable?

A. The stand-alone feature of the Finger Plan sounds very plausible, but, in a district of this type, particularly where the fraction of students who are black is growing, as it has here – you recall that by 1984 it's much higher than it was in 1972.

[p. 219] The Finger Plan was really designed for a district that's 20 percent black. The one grade one-way busing and four grades the other way, or a ratio of four to one, assumes that the body count is four to one going the other way; that is, that there are four people who are not black for each person who are black.

By the time that we move out to the current period, where we're talking about upwards of 40 percent black, we're much closer to a ratio of one-and-a-half to one.

The provisions for stand-alones that pull out the central districts, and as we get diffusion going this way that makes below-average attendance areas eligible for stand-alone status, areas in – currently, as of 1984 – in the 20- to 35-percent range, whiplashes the remainder of the district, and forces, in principle, continuing further busing, and seems to me to be –

You know, it's just not a plan that was designed to withstand the kind of demographic change that occurred in this district. It was a fine idea in terms of racial diffusion if you work with very, very tight bounds, but then you don't need it. If you work with really tight bounds, the schools are balanced anyway, and there wouldn't have needed to have been any busing plan.

It's a funny provision, but you open this 30-percent wedge, plus or minus 15 percent, creates a lot of slack and creates a lot of inequity, and, to my mind, that, coupled with [p. 221] The fact that the overall racial composition of the district was changing, means that the plan just couldn't last, that it was really designed to fail.

Q. Did you analyze what impact the stand-alone school feature would have if it had been continued in the Finger Plan over time, say from 1986 to 1995?

A. Well, what we did, and it's plotted in exhibit 89, is take the projections that we referred to yesterday at the beginning of the testimony for the racial composition of

attendance areas in 1995, and then, using the plus/minus 15-percent rule with our projections for 1995, –

Q. Just a second.

A. – we identified the areas that looked as though they would be eligible under the projection.

And what we get is all of the areas that would have been eligible in 1984 would also have been eligible – we have star, which was almost eligible in '84. It's percentage concentration was within bounds, but it was not racially stable.

Q. Doctor Welch, let me interrupt you for just a moment and ask whether or not you projected in 1995 what the range of the racial composition of the attendance area would have to be to qualify for stand-alone status.

A. Yes, we did. There it's identified in the legend to the map, and the range it 27.3 to 57.3 percent. Again, it's a [p. 222] 30-percent range.

Q. Well, how does that range compare to 1984?

A. Well, it has slid up by 7.3 percent to allow for the trend through time in the fraction of students – the growth in the fraction of students who are black.

Q. So in 1995, under your projections, the neighborhood would have to have a higher percent of blacks living there in order to qualify for stand-alone status?

A. Yes, than in 1984. That's actually – while we piece this back together – an example –

I'll wait.

Q. Go ahead.

A. That's an example of what I would call the unintended features of the Finger Plan. The idea is that, in a district where the overall fraction of students that were black is changing, whether it's rising or falling, an attendance areas that's completely racially stable –

I thought it would be interesting?

THE COURT: Why don't we take a ten-minute recess. Court is in recess.

(A recess was had, after which the following proceedings were had.)

THE COURT: You may proceed, Mr. Day.

Q. (BY MR. DAY) Doctor Welch, again directing your attention to exhibit 89, would you explain how you did the projection of [p. 223] the zones that would qualify for stand-alone status as of 1995?

A. Well, the – excuse me. In the – back in exhibit 11, I described the projections in which we projected student enrollment, residence patterns of students enrolled, grades one through twelve, using assignment records data, and here we just plot the data from those projections.

So we're actually using grades one through twelve here, but it is the same data as was referred to in exhibit 14 where we had the map of overall residence patterns.

And what we've done here is use the same percentages underlying those zones in exhibit 14, and we have divided them into three groups, those identified with the

darker color, the blue color, would be those with above 57.3 percent black, or those that we would guess or project by 1995 would continue to be above 57 percent black. Those in the –

THE COURT: What was the – what was the figure?

THE WITNESS: It's 57.3.

THE COURT: 57?

THE WITNESS: 57. Yes.

THE COURT: All right.

A. – and those in the lightest color would be above – would be below 27.3 percent black, and those two extremes, the lightest and the darkest, would be ineligible for stand-alone status, one for not having enough people who were not black, the other for not having enough people who are black.

[p. 224] The intermediate color, the ghastly green, is our projection of areas that would be eligible for stand-alone status. And there are, let's see, I believe, six regions that would be eligible for stand-alone status, we would guess, by 1995, that are not eligible today or were not eligible in '84, and that's because of this process that we referred to many times of the continuing diffusion of the black population throughout the city.

Q. In your opinion, if the stand-alone feature was followed year by year into the future up to 1995, in the year 1995 would there be more of a busing burden being placed on the young black children?

A. There are two edges. There's the – on the one hand, as the stand-alones occur, a smaller number of students are bussed. And so, obviously, some black children who might otherwise be bussed would not be as they dropped out with the stand-alone schools. Those who would be bussed, however, would be bussed further and further distances.

What's clear, and what I hope is clear I wanted to illustrate with this map, is that the areas that are intermediate in racial concentration are the areas that are eligible for stand-alone status. They're also geographically intermediate. They lie between the areas that have too few blacks and the areas that have too many blacks in terms of the balance of the district. And since busing goes from too few to [p. 225] too many and from too many to too few, busing distances of those bussed are designed to grow. That's a feature of this plan.

Q. In your opinion, what impact would the stand-alone schools in 1995 have upon the fifth-year centers in the northeast quadrant?

A In 1984, had the stand-alones been implemented, the areas that were eligible, it would have continued to draw down the number of fifth-grade centers, and that's obviously an issue that one observes in going through the planning documents. It's something that the school board is asking about.

MR. DAY: At this time we offer defendant's exhibit 89 into evidence.

MR. CHACHKIN: Your Honor, the projections that are depicted on exhibit 89 are tied to defendant's

exhibit 11, as to which the court has reserved ruling until there is an opportunity for cross-examination. I would request the same with respect to this exhibit.

THE COURT: Very well. The court will reserve ruling until –

I did something. I don't what it was.

Very well. You may proceed.

Q. (BY MR. DAY) Have you been involved in designing and working on desegregation plans in the past, Doctor Welch?

A. Not extensively. No. I did work on the design of the [p. 226] Pulaski County Plan.

Q. In light of the 125-School-District Study that you did that was recently approved by the U.S. Commission on Civil Rights, are you familiar with the various types of desegregation techniques and plans that are being used throughout the United States?

A. I think so. Yes.

Q. Do you have a professional opinion as to whether or not the Finger Plan was designed to operate indefinitely?

A. Yes, I do.

Q. What is that opinion?

A. I think it was not. I've indicated earlier that it may have served a useful purpose at one time, but it had some inherent drawbacks. It was really designed for a racially stable school system, and it becomes very, very

clear, and, of course, as the race composition of the Oklahoma City Schools has changed, they strained the program, they stressed it, and this stand-alone feature really threatened it.

* * *

[p. 236] Okay. I think I had let you get as far as the first step, which was how you derived your projections for the district-wide racial composition in 1995. Why don't you go on from there.

A. Okay. The only thing preserved from the first step is the district-wide composition, by the way.

Step two moves within each zone and analyzes total number of students in the district within the zone, and it – and it does a trend line as step one does. All of these are trend lines, but they're just different kinds of trends or they're explaining different things.

And, again, it's time series regression that is used to forecast the number of students within each zone, of course, most have decreasing enrollment.

Step three –

Q. Let me interrupt you and just ask you to try to summarize, as briefly as you can, for the benefit of the court and the record, what you mean by time series regression.

A. The – it's a statistical procedure, but the idea, really, can be understood a bit more easily.

You take something like total enrollment in a zone, there were 88 that were analyzed in this case, and think of plotting, on a vertical axis, the number of students in

this zone and attending the Oklahoma City Schools, without regard to their [p. 237] race, and, on the horizontal axis, the years, beginning with 1974 through '86, and just plot them for the twelve – the thirteen years, '74 through '86. And now think of drawing a line through those points and then extending the line out to 1995.

And, of course, there are lots of ways to draw lines through the points, and the regression property that I was referring to has to do with the goodness-of-fit criterion that's used in selecting one line amongst many.

Q. If I understand correctly, it's a mathematical technique for shaping the line that best fits the points?

A. Subject to some constraints. It's a way of choosing the – what it does is, if in that hypothetical scatter that I've described, if you pick a single point, which would be the average over the period, the average years and the average enrollment within the zone, any line drawn through that point, regardless of whether it slopes in the opposite direction of the data or whatever direction, will have the property that if you use it to predict within the range of the data, the average projection error will be zero. You will overestimate as often as you underestimate. In fact, drawing lines the like that is a pretty good way to see just how ridiculous average errors of zero can be.

So the criterion is given that an average of zero is free. It's easy to get. What other things would we like to impose?

* * *

[p. 239] And so I checked to see, "Is there any evidence within this one zone, – " remember, we're going to do this 88 times " – that the annual percentage growth rate in attendance itself is changing through time over this thirteen-year period?"

Now, while we're getting more precise, I should say that all of these regressions are weighted toward 1986; that is, I discount the more distant past. So I use linear weights with calendar time.

So the first year, 1974, gets weight one; second year, 1975, gets a weight two; and 1986 gets a weight of thirteen. So I place a lot more credence –

What I'm trying to do is hit the end of the data. I'm more concerned with that, because I'm going to forecast from that point forward, than I am the end of the data. So I discount it with weighting logarithm.

Then I come back, and the first thing I do is I generate these two lines. Now, all this is done – is computed with computers, so I can't tell you how often these criteria matter. But I then check and say, "Let's take the recent past. Let's take 1979 to 1986. Did enrollment increase during that period, and, if so, do my two projections agree that it should have increased over that period?"

* * *

[p. 241] A. That's – that's one of the criteria, the – it was which one was consistent in projecting a sign change over the coming nine years that would have agreed with the most recent seven years. And, by "sign change," I mean if enrollment had dropped during the most recent

seven years, I wanted to project a continuing drop. If it had increased, I wanted to project a continuing increase.

Q. Well, are both of these projection methods valid methods for making population projections or demographic projections?

A. Let's think of that question two ways, okay?

One, "Is there such thing as a valid forecasting procedure?" and the answer to that's "no." I mean, there is literally no scientific basis for assuming that the world regenerates itself.

The other is "Am I aware of are you aware of a superior alternative?" and I don't think so.

"Is it state of art? Is it what people do?" Yes.

Q. Well, I don't know how you determine the meaning of the word "valid." These are –

Have you used both of these methods, and do demographers use both of these methods in making projections?

A. Routinely.

[p. 242] Q. So we have –

A. People who are doing forecasting use a variety of models, and –

Q. And so we have two different methods, and the one that is used in any given instance depends upon the results that it comes out with.

A. Of course.

Q. Okay. I think we'd gotten you to the point of describing how you came up with the projection for total attendance for each of the areas in 1995.

A. I should point out that the forecast is not just one to 1995, but it's every year, '87 – after '86, '87, '88, and so on to 1995. That gets to be important in the third step.

The third step looks at – now considers all zones simultaneously in a fairly complicated way, but what it looks at is the proportion of students who are black in that zone relative to the district-wide average, and it tries to forecast it now not as a smooth trend line. As in the first two cases, we used just trend regression. The first step for the percentage of students district-wide who are black, the second step for the total number of students in each area. The third step now –

Think of what we have built so far. We know, district-wide, the fraction of students who are black. We know how many students in each area there are. So if we add that up and [p. 243] multiply it by the district-wide fraction that's black, we know how many black students there are.

The next step is to say "where do they live?" How to allocate them among zones.

So what we do is come back over this same period and take the distribution of blacks across areas and then ask how that has changed through – through time.

And now we look for two factors, –

Q. Let me interrupt you and ask you why you decided to do that rather than simply tracing the trend in percent black in each attendance area between 1974 and

1986, the method that you used for estimating the proportion of blacks in the district as a whole and the proportion – I'm sorry – the total attendance in the future in each attendance area, and simply do another trend regression?

A. Okay, there are two reasons. The short reason, and a sufficient reason, is that the numbers would not have been consistent if I had done that. If I had used within-zone trend regressions, they would not have added to reasonable behavior at a district-wide level.

Q. I'm sorry, they would not have – the results would not have been consistent with what?

A. With district –

A property of these forecasting techniques is that if I run a linear regression on the fraction of students who are [p. 244] black in each zone; I run linear regression on the number of students who are black – or number of students in each zone; I now take the product of those two predictions; and I come back and I add up, over the 88 areas, and do a linear regression, log linear exponential growth on numbers of students; and then I do a linear regression on percentages who are black, take that product, I'll get, from that, a total number of blacks district-wide, an overall percentage district-wide. If I add up the other data, it won't agree. I'll get another percentage.

And I really didn't want an inconsistent forecast. I thought someone would be cross-examining me. And so I designed the procedure to be completely internally consistent.

Q. You mean you designed a procedure to withstand cross-examination?

A. Well, and also a straight-faced test. I wanted numbers that were going to make sense and that would be consistent.

If you start making the kinds of calculations that I'm going to put these numbers through later on, and if they're not consistent, you'll always have three or four different ways of making a calculation. And then you're always faced with the choice of explaining why you used this procedure or the other, or saying, "No, we did it every way and they agree, they disagree," And you work yourself to death. It's just a good rule to be consistent at the word go, and so you build up at [p. 245] these basic blocks so that you're sure that it is going to be consistent.

Q. Well, I understand you to be saying that you choose the method you're going to use to try to come out with the result that you want that's consistent at the end, even if that means you use different techniques for different parts of the database that you're building.

A. Well, –

Q. That is what you've done here; is that not correct?

A. Yeah, a lot of what you say is true. You choose the procedure that you want in order to be consistent, and there is no necessary inconsistency with using alternative models for different reasons. There are excellent reasons for wanting to use alternative models for different zones.

One zone, as an example, in the northeast quadrant, could have declining enrollment and smoothly declining enrollment, linear trend. Another zone in the northwest could have rapidly-increasing enrollment at an accelerating rate.

Now, you surely wouldn't want to use a model that projects increasing at the same rate in both areas, decreasing at the same rate in both areas, decreasing at an accelerating rate in one area if the other is increasing at an accelerating rate. You want to describe the data.

Q. Well, I mean, just how much confidence can one have in the outcome of these projections then when we have a moving target [p. 246] where the demographer or the mathematician or statistician chooses among methods in making the series of projections? I mean, what is the reliability of these rather exact figures that you have on the exhibit for racial composition of each attendance area in 1995?

A. That's a fair question. The – one, you have more confidence in them than you would if the demographer or the mathematician or statistician who is making the forecast had used a single and variant procedure.

Two, "How much confidence should you have? Can I put sampling errors on these numbers?" Yes, in principle I can. I did not.

"How wide are the intervals?" I can't guess, but I think it would be appropriate to call these numbers guesstimates, that I think they're straight-faced, they come from a serious procedure that's applied conscientiously, there's no result in terms of configuration that I'm

working to. I'm trying to describe the data. I think I've done that. It's as good a job as I can do in short time. I can spend longer and, I'm sure, improve the procedure.

But you certainly don't want to look at a number like .913 – or .193 and see the "3," and when you see the "9," you probably want to say .15 to .25. That's – I mean, they're an indication.

* * *

[p. 249] As I was saying before we had the question about why I used the ratio rather than the percentage, the factors used to explain that ratio were, one, the previous year's ratio, "How, in the year earlier, did this zone compare to the district-wide average in terms of percentage black?" And then we had a ratio in what I refer to as adjacent zones.

And I should say that a property of these data, and one that's not a surprising property, is that where one area has a high proportion of blacks relative to the district-wide average, one expects growth in adjacent areas, and that's part of the diffusion process that we've been describing.

So, in addition to what this area was like last year, which was always the best predictor of what it's going to be like next year, we look at what surrounding areas were like last year, and we do this by identifying what I have referred to as first and second tier neighbors.

Roughly, First tier neighbors are those that are adjacent to a given attendance area, and second tier neighbors are those that are adjacent to those that are adjacent to a given attendance area.

* * *

[p. 252] Q. Well, how is it that, if you turn the second page of exhibit – Defendant's Exhibit 11, that for zones that, for example, Dunbar, which was 97.3 percent black in 1972 and moved upward to a hundred percent black in 1986, your projection is that it will be less than 95 percent black in 1995? Intuitively the trend is in – is in the direction of going to an all-black attendance area situation.

Did you constrain – is it the influence of adjacent tiers that results in that kind of a downward projection even though the growth had been in one direction between 1974 and 1986?

A. You know, I – I would – I'm not sure. I would have to go back and – and pull out that one projection. We should have – should have done that, if you were interested, during the deposition.

It is true that in '86, Dunbar is a hundred percent black and the forecast is 95 percent black, 94.6 by 1995.

Q. As a matter of fact, all of the areas that were above 90 percent black in 1986 are projected by this method to decline, if you compare the second two columns; isn't that correct?

A. I believe so. Yes.

Q. Does that suggest to you that, particularly with respect to the zones that were a hundred percent black in student residence in 1986, that whites are going to move into those [p. 253] areas, whites with children attending the Oklahoma City Public Schools?

A. That's certainly what's in the projection.

Q. Fine. Now, Let me ask you another question, Doctor Welch.

You talked about using adjacent tiers, and this is the 1995 exhibit, but I just am using it because it shows the location of the attendance areas.

What did you use for adjacent tiers with respect to attendance areas that are at the edge of one of these portions of the Oklahoma City School District, such as Garden Oaks?

A. Uh-huh.

Q. Now, clearly, the first adjacent tier to Garden Oaks is Edwards. There's only one school zone, if I'm interpreting the map correctly, one attendance area that is, in fact, contiguous to Garden Oaks.

Would that then constitute the entire first tier or first adjacent tier?

A. I'm quite certain, yes.

Q. So –

A. We use the average composition of the adjacent tier, and it is – we do not go outside the district, so it's a within-district adjacent tier. We –

Q. So that the calculations for the attendance areas differ depending on their location in terms of the amount of data that are entered in and the way that the calculation is done?

[p. 254] A. Yes.

Q. Would that have had, conceivably, some impact on the – on the numbers?

A. Oh, I'm sure. Everything does.

Q. Now, Doctor Welch, the data and the projections that you made for Defendant's Exhibit 11 which were translated onto the map which is Defendant's Exhibit 14 and then used in the projections of dissimilarity and exposure indices on Defendant's Exhibit 40 all ultimately point toward the calculation of these indices reflective of the degree of racial balance throughout the attendance areas; is that right? That's the way in which –

A. 14 to 40. I think so that's right. Yes.

Q. Doesn't the use of adjacent areas and adjacent tiers have a tendency to round off the extremes? I mean, isn't that reflected in the projections that these zones, which have become all black by 1986, were going to decline? Doesn't that have an impact on the dissimilarity index which is supposed to take extremes into account?

A. It – there are two questions.

One, a general property of regression estimators – it has less to do with the use of adjacent tiers as to the property of the statistic in general – is that they fail to predict extremes. I mean, the better you fit the data, the more likely you are to hit an extreme, but that's a problem.

* * *

[p. 269] A. We weren't privy to the projection information. We just observed what actually happened.

Q. Did you review court documents in cases involving judicial proceedings?

A. Yes, we did.

Q. And you don't recall finding documents giving projected results on their plans.

A. We didn't use them. We didn't – that's not part of the database that we developed. It's nothing that we retained.

Q. So we can only make judgments from this exhibit about the results that are actually achieved. We really don't know anything about effort or success or anything like that in these districts from the data on these exhibits; is that correct?

A. You see the index of racial balance here, and that's all it purports to be.

* * *

[p. 280] Does this list of districts that the justice department characterizes as unitary include, in Georgia, Coweta County, C-O-W-E-T-A, Lee County, and Vidalia, V-I-D-A-L-I-A?

A. Yes.

Q. Do you know if those school systems have been held to have achieved unitary status by the federal courts?

A. No, I do not. I did not research or attempt to verify this list. I took it at face value as though it was accurate.

MR. CHACHKIN: Your Honor, I'd like to hand to the clerk a copy of an opinion of the Eleventh Circuit which I have marked for identification as Plaintiff's Exhibit 65 and of which I would request that the court take judicial notice. It's a decision in a case called Georgia

State Conference Of Branches Of NAACP versus State of Georgia, and I would direct the court's attention particularly to pages 1413 and 1414, in which the Court of Appeals states that none of the local – local defendants ever acquired unitary status through this procedure, referring to the prior paragraph in the decision, referring to holding a hearing and entering an order that a system is unitary, and going on to identify, among the local defendants, specifically, Lee County, Coweta County, and Vidalia City.

* * *

[p. 289] So is it not correct to say that this is an instance where the busing distance for some black students was increased when a school no longer was a stand-alone?

A. Yes, it is.

Q. So it really works both ways. You mentioned in your direct testimony, particularly with respect to schools that qualified for stand-alone status in 1984 and your projections for 1995, that creation of additional stand-alone schools would increase the busing distance for black students in the Northeast Quadrant.

A. As a general rule, that's right. This reassignment is pretty strange. I mean, coming from the extreme North of this Northeast Quadrant down to the South and West.

Q. Did you examine the history of stand-alone schools in the Oklahoma City School District after 1972?

A. I think so. Yes.

Q. Do you recall how many stand-alone schools there were in 1972?

A. I believe there were eleven. There were eleven.

Oops. Yes.

Q. And do you recall how many stand-alone schools there were in 1984?

A. There were three.

* * *

[p. 292] Q. And you also said this morning, I believe, that the four-to-one ratio, the grade division at the elementary school level in the original Finger Plan assumes the body count is four to one, and that by 1984 it was closer to one-and-a-half to one; is that right?

A. That's right.

Q. In your opinion, if the Finger Plan had not included the stand-alone feature in the beginning, would it have been desirable, as these changes occurred, to alter the plan to reflect those new ratios by perhaps adding a grade to the – what were then fifth-grade centers?

A. If – if one is –

There's kind of a strange balance. When people talk about the busing burden in these cases, the reference ought to be to equal numbers of people and not to equal percentages to groups, and that's the reason that I said the original Finger Plan was designed for a four-to-one system, and the system gradually moved to something that was closer to one-and-a-half to one.

If you were going to maintain steady state racial balance, if that's the objective, then, indeed, the grade relationship [p. 293] among busing should have changed.

Q. Would you have – in your opinion, would that have been a good change to make in a Finger Plan without a stand-alone feature?

A. I don't know in what sense you're defining "good". If I wanted to maintain racial balance in the school system with a minimum amount of busing, it would have been an essential ingredient.

* * *

BELINDA BISCOE

[p. 295] THE COURT: Call your next witness, Mr. Day.

Let the record show the parties are present.

MR. DAY: Our next witness is Doctor Belinda Biscoe.

THE COURT: Driscoe?

MR. DAY: Biscoe, B-I-S-C-O-E.

Belinda Biscoe, (A Black Female)

Being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. DAY:

Q. State your full name and occupation for the record.

A. My name is Belinda Biscoe. I'm an administrator for the department of support programs with the Oklahoma City Public Schools.

Q. Would you tell us about your educational background.

A. Okay. I received by [sic] Bachelors and Masters Degrees from Fisk University in Nashville, Tennessee.

After that I began on my Phd in Psychology at Vanderbilt-Peabody in Nashville, Tennessee.

* * *

[p. 302] Q. There is a pointer there in front of you, if you need it.

THE COURT: What is the exhibit?

MR. DAY: 63.

A. Okay. The exhibit that I'm looking at is a rank ordering of the elementary schools in our district. These schools have been ranked by the percent of black students that are currently attending these schools.

I think what's interesting to note here is that there are no schools –

Q. (BY MR. DAY) Excuse me. What year does that exhibit cover?

A. This year is 1985/86.

Q. Okay. Would that have been the first year that the board's 1985 assignment plan was in operation?

A. Right. This was the first year of implementation of the new assignment plan.

Q. And does this show the racial composition of the schools when the neighborhood plan was, in fact, implemented?

A. Yes, it does.

Q. All right.

A. I think probably what's most interesting to note about this is that if you look at all the racial breakdown at all of these schools, there currently, at this time, there were no schools in the district that were 90 percent white or above.

* * *

[p. 310] In addition to that, it was very important to the board to apprise the community of that option. So those of us in research sent out letters to all of the elementary parents in the district apprising them of that option, letting them know that, while the recommendation would be made to return to neighborhood schools, that anyone who wanted to opt for their same assignment under the Finger Plan could have that option.

Q. And, to your knowledge, did parents opt to exercise the majority-to-minority transfer?

A. I believe that first year of implementation of the plan we had approximately 200 students who took advantage of that option.

Q. And do parents continue to take advantage of that option today?

A. Over time what has happened is that the request for that option has decreased. There have not been as many parents this year requesting that option as there were year one of the plan.

Q. But some are still requesting it?

A. But there are some parents who still request that option.

Q. Doctor Biscoe, while you were working with the board committee during this six-month period of time, –

[p. 311] You were working with them the entire six-month period, were you not?

A. Yes. That's correct.

Q. Did you at any time observe or sense, from the actions of any of the board members, that they were in any way trying to be unfair to any minority students?

A. No, I never sensed that. I would not have been able to work with the board if I had ever felt that. That just was not the agenda. They were very concerned about equity and about the welfare of all students in the district, and that was really projected in everything they said and did when I worked with them.

Q. As a black person, did you, at any time while working with the board committee, sense that they were taking any action or considering to take any action which, in your opinion, would have been discriminatory against black students or teachers or parents?

A. No, I never felt that at any time.

Q. Did you feel that the committee was watching out for the interests of minority students, teachers, and patrons?

A. I felt that they were concerned about minority students and just all students in the district.

Q. Were any members of that committee black?

A. Yes, Doctor Clyde Muse was the – was black and was a member of that committee.

[p. 312] MR. DAY: Thank you.

CROSS-EXAMINATION

BY MR. SHAW:

Q. Doctor Biscoe, my name is Theodore Shaw. I'm one of the Lawyers representing the black school children in this litigation.

You testified that you are a member of the metropolitan fair housing board.

A. Yes, that's correct.

Q. Why did you get involved with that board?

A. Mainly because of my own concern for fairness and for people having – I feel strongly that people have a right to live where they want to live, and that if we need to tighten the laws or do whatever we have to do to insure that that happens, then I want some of my energy directed in that – to that regard.

Q. Well, to your knowledge is housing discrimination something that still occurs within the Oklahoma City Community?

A. I think housing discrimination occurs throughout this country. I don't think that Oklahoma City is unique in that regard.

A. So there's a need for a metropolitan fair housing board here?

A. Throughout this country.

Q. But I'm talking about Oklahoma City.

[p. 313] A. There's a need for one here just as there is a need for one in California or –

Q. I understand. I would agree.

Now, Doctor Biscoe, is the testing that you do only related to housing that is on the market and owned by private individuals?

A. I've only – I've been out on just a few test cases, and that was a privately-owned condominium that a couple had. But it cuts across all boundaries.

Q. Is that – would you agree then that there has been discrimination in the housing market in the past and perhaps in the present that has been perpetrated by non-private entities?

A. That's probably true. Yes.

Q. Is it your view that black people in Oklahoma City can live wherever they want to live; that is, free of housing discrimination?

A. Yes.

Q. How does that square with the notion then that housing discrimination is still a problem within the Oklahoma City area?

A. I don't think those two things are mutually exclusive, in the sense that I feel that the work, for example, that Metro Fair Housing does in this community helps to give people a fair shake.

If a person, for example, does feel that they are being [p. 314] discriminated against, there have been enough cases in the books that have been won where people have been able to finally get those housing – get that housing even if initially they have been discriminated – felt they

had been discriminated against. I just don't see those two things as – I don't think that having racial housing discrimination means that people can't live where they want to. People can. But there will always be some people discriminating.

Q. So I take it then that what you're saying is that people can live where they want to live in the Oklahoma City area because there's always the remedy of going to court, if need be, to protect their rights?

A. Yes, but I don't want to give the impression that it's a major problem. It's just – It's a problem that just exists in this country, and I don't think it's of the magnitude that it's – that the majority of the people who go out are being discriminated against, but there are some people who are.

Q. Right. Now, would you agree that people who seek housing – black people who seek housing sometimes can be discriminated against and not even realize that that discrimination has taken place?

A. Yes, I would agree with that. That does happen sometimes.

Q. And testing then is one of the methods that is used to verify that discrimination is taking place; is that correct?

A. That's correct.

[p. 315] Q. But testers are trained; isn't that correct?

A. That's correct.

Q. And their training allows them then to recognize or identify housing discrimination where someone who is not trained in the same manner may not see it?

A. That's correct.

Q. Just to make sure I understood you, you indicated that in the Nashville experience that you had –

A. Uh-huh.

Q. – in which you were a victim of housing discrimination, you were actually told that the apartment would not be available to you because of your race.

A. That's right.

Q. Is it your experience, as someone who's involved with the fair housing board here in Oklahoma City, that most people who are victims of discrimination are actually told that they will not be rented to on the basis of race?

A. Probably not. Discrimination is probably – is a lost more subtle now than it was ten years ago. So people probably find other ways to get around that without ever giving a racial motive.

Q. You indicate that the laws weren't as stringent as they were now when you wanted to pursue your claim. I was wondering which law were you referring to? Was that a local Nashville ordinance or something?

[p. 316] A. Well, I'm not sure, It's just that ten years ago there was no such thing as a metro fair housing in Nashville, and so we did our own test case. We had a friend of ours, who was white, also call this apartment

complex – well, it was a duplex – and try and rent it, and she was told it was available, that she could move into it.

At that point, the couple that did not want to rent to us became a little fearful, because I think they were starting to put two and two together, and so we called back and they used other excuses. "You have a dog. We don't want dogs here." And they went on and on. And we continued to have other people call who were white who had animals and this kind of thing, and – and they were – they said "this is fine. You may still rent."

When the representative from HUD came to Nashville from – well, he was in Atlanta. When he came to interview us in Nashville, he basically said that we did not have enough evidence, with the test cases that we had done, we had witnesses who were willing to testify. We had verbally told him that the couple had just point blank said, "you are black and you do not want to live here because there are no black people in this area," and we were told that that was just not enough evidence.

And that is what I base my statement on that the laws apparently were not a strong, because I considered that to be [p. 317] really powerful evidence. Of course, the other couple who filed the suit jointly with us had money to get their own private attorney, and they subsequently won the case. The settlement was about $1200. But it caused a lot of anguish. It was in the papers, and –

Q. sure?

A. – people almost lost their jobs. It was not a – it was a big thing for us.

Q. It's an unpleasant experience to go through.

A. Yes.

Q. Doctor Biscoe, when was the Fair Housing Board in Oklahoma City established?

A. I don't remember that date of inception.

Q. When did you first become aware of the board?

A. I have been on the Metro Fair Housing – I think this is my third year of being on the Metro Fair Housing Board.

Q. You don't have any idea whether it's ten years old, 20 years old?

A. I just cannot remember the date of inception. I hate to guess at it.

Q. What does the board do to advertise its services or, in fact, what does the board do to advertise that housing discrimination is a problem and people who are victimized can come to the board?

A. We have tried to do a lot of things. We've had posters [p. 318] made up to put on local buses here in Oklahoma City. We have fund-raiding events and go out into the community. We send out lots of information. For example, a lot of information comes to our school district, and, as a part of the school district, I have provided information on housing patterns in our district, and that sort of thing, to Metro Fair Housing prior to becoming a member of the board there.

Q. What kind of information of housing patterns are you referring to?

A. Oh, just demographic information in terms of where students are residing. They look at that and keep those data just to get a feel for whether or not realtors in the area are doing what they call steering; that is, steering people to certain areas because of racial composition.

Q. And as somebody who is employed by the school district, I'm not sure exactly – you mentioned that as somebody who is employed by the school district that you disseminate certain kinds of information, but I'm not exactly sure why you're doing that and in what capacity.

A. When I was in the research department. Of course, all of the information in that department is public information, and anybody who requests information on student population – on our student population in terms of where students are residing or anything are privileged to that information.

Q. Has it been your experience as a board member that – that [p. 319] is of the Fair Housing Board – that realtors, in fact, do disseminate information about schools when they're showing houses?

A. That is a real big drawing card. Yes.

Q. You indicate that the success rate of the Fair Housing Board in Oklahoma City is fairly high?

A. It has been. That's right.

Q. Can you tell the court or give the court an indication of the volume of cases that the board has handled?

A. I don't have those exact numbers. I know a lot of what happens in terms of volume of cases with Metro Fair Housing, of course, depends on who the staff people

are at the time and how energetic they are in terms of getting information – getting the cases tested, following through with them. Right now there's a very – a new person in that position, new staff person, and she's done a lot of work. I don't know off the bat how many cases per month we're seeing.

Q. You've indicated that the remedy for housing discrimination cases may be monetary damages and that often the people don't want the apartments by the time they're available, or the housing, even though they may have a right to it; is that correct?

A. Right. But I can't say specifically what – how that's broken out in Oklahoma City, whether or not people have still opted to secure that housing once the case is settled. I don't [p. 320] have those data available.

Q. But what may happen then is that even though someone may recover a damage award if he or she is victimized by discrimination, the segregative effect of that discrimination may still continue if he or she does not choose to take the apartment; isn't that correct?

A. It could, but I would speculate that, once people lost a case of that nature, that they'd be real hesitant to discriminate again.

Q. They might.

You indicated that there were – there wasn't enough money for the Fair Housing Board?

A. Yeah, that's true. I work with a lot of non-profit organizations here in Oklahoma City, and I think anybody who has worked with non-profits know that that's

always an ongoing battle, having enough money for operational costs and just –

Q. How was it funded?

A. A lot of it is from private donations. They do get some – some city money, I believe. But a lot of it is just private donations.

Q. But, in any event, there's enough work for the board to do so that it could use more funding; is that correct?

A. Yes.

Q. Now, you were asked about Mr. Day – or by Mr. Day, rather, about a number of exhibits, exhibits 63 and 64 and 65 [p. 321] which showed a rank ordering of schools – elementary schools by racial percentages with a projection made in exhibit number 65.

A. Yes.

Q. You also pointed out that no school in any of those exhibits was more than 90 percent white; is that correct?

A. Yes.

Q. What is the significance, in your view, of that observation?

A. Well, I think oftentimes – one of the things that happened with the Finger Plan is that we were asked to balance our schools only on the percent of black student in our district.

However, if you – since I work a lot with federal programs and attend a lot of those meetings, as I've gone

around the country one thing I've noticed that happens in many of the school districts is that people look at the percent of minority students in their district, including orientals, native American students, Hispanic students.

Of course if you look at our district in terms of total minority population as compared to white population, you get a totally different picture than if you just look at those data black-white.

* * *

[p. 327] Q. Well, can you tell the court, Doctor Biscoe, what the board has done to promote M-to-M transfers?

A. There are things that are being talked about now in terms of continuing to send out letters to apprise parents of that.

Q. Has that been done previously?

A. That did not happen this year. No.

Q. Anything else?

A. No. I have talked with Doctor Steller at length. He's been real concerned about beefing up the M&M transfers and making sure that parents know. So I do know that that's something that's been on his agenda in terms of more communication with parents regarding that.

Q. Did the board or did the administration do any study of who was exercising the M-to-M transfers in the first year?

A. I do not believe – I'm not familiar with any analyses that have been done of the M&M transfers in terms of who the people are that are requesting those transfers.

Q. Was there any analysis done with respect to the particular schools from which the transfers were being made?

A. I think those data are available. I just don't recall exactly which ones requested them. But we do have that information.

* * *

[p. 338] THE WITNESS: Yes, I do.

THE COURT: Do you think it's discriminatory in any way?

THE WITNESS: No, I do not.

THE COURT: Now, what is the faculty, black, white, *R [sic] mixed?

THE WITNESS: The faculties at all – at all the schools are mixed.

THE COURT: All schools –

THE WITNESS: Yes, sir.

THE COURT: – Throughout the whole system?

THE WITNESS: That's correct.

THE COURT: Is it your opinion that the K-4 students are too young to be bussed from school to school?

THE WITNESS: I think they are.

THE COURT: And will you tell the court why?

THE WITNESS: Kids six – from six years old until they're about eight years old, I think, are just beginning to make sound judgments. Having to walk to bus stops and then to go to parts of towns that their parents don't have access to, necessarily, during the day if they get ill, I think it just creates a stress on the family and the child.

By the time a child is ten years old, they're better able to make decisions in terms of steering clear of strangers, paying attention to street crossings, and those kinds of [p. 339] things, and I do believe they're just safer at that point in terms of having to be bussed.

THE COURT: Do you think there's any distinction in the busing of black children and white children?

THE WITNESS: No. Students are bussed equally under the new plan. All students are bussed from fifth grade on. That's regardless of race.

THE COURT: What has been the parent relation – parent-teacher relation under the operation of the 4-K – of the K-4 plan?

THE WITNESS: With the new school assignment plan?

THE COURT: Yes.

THE WITNESS: All of the data that we currently have indicates that parent involvement has increased significantly.

We now have more parent-teacher associations than we have had for years in the Oklahoma City public schools as a result of the uniting of communities, I guess is the best way to put it, and there's a lot of work continuing to go on to even – to increase those PTA associations – PTA and PTO associations throughout the district.

THE COURT: Do you see any discrimination in the 4-K plan to blacks?

THE WITNESS: No, I do not.

THE COURT: I thank you. You've been a very intelligent person.

* * *

SUSAN HERMES

[p. 347] blacks were more frequently moving into all parts of the school district boundaries.

A. Oh, yes.

Q. Are you aware of any other effort or action taken by the board of education to try to stop blacks from moving into any areas of the school district?

A. Not to my knowledge.

Q. Okay. Tell us about the curriculum, teacher assignments, special-ed courses, the availability of counselers, [sic] that sort of thing, under the neighborhood plan.

A. The board committee that was devised began with the premise that we could recommend to the full board that we stay unitary district; that we would make sure that the curriculum in all of the schools was the

same; that the staffs in all of the schools would be racially mixed; that the equipment, that the supplies would be divided equally; and we provided for a majority-to-minority transfer so that any parent who was not happy with a neighborhood situation could – would not be locked into that situation, they could have their child attend a school in which they would be in the minority.

* * *

[p. 349] Q. Now, has the board made any changes whatsoever to its assignment plan for the fifth year and up? I mean, aside from the boundary changes on the fifth-year centers.

A. Aside from boundary changes, we were not, as a committee, authorized to change anything beyond the fifth-grade level.

So, no, there were no changes in the plan and there are none today.

Q. So the tenants of the old Finger Plan, as they applied to the fifth-grade level and up, are still being followed by the board; is that right?

A. Yes. Yes, that's correct.

Q. Is the board still using compulsory busing to achieve racial balance at those grade levels?

A. Yes, that's correct.

Q. Does the board have any intent of stopping that procedure and reverting or resorting to neighborhood schools grades K through twelve?

A. No.

Q. Have you ever heard any board member suggest that?

A. No.

Q. Now, there has been testimony, Mrs. Hermes, that, as a result of the implementation of the K-4 plan, that there has [p. 350] been an increase in parental involvement.

As a member of the board of education over the past two years, have you personally – excuse me – personally witnessed any events or seen any data which indicates that there has been an increase in parental involvement?

A. Yes.

Q. Would you tell us about that?

A. Before every board meeting, the board has brought to its attention various children in these districts who have won awards and such like.

In addition to that, every new PTA unit that has formed has come to the board for recognition.

In the last two years, we have gone from 15 PTA units to nearly 50, sometimes recognizing three and four units a meeting.

So I have been personally aware of a continuous flow of units being developed.

Q. You've gone from how many? 15?

A. 15 to nearly 50, and it may be 50 by this time. It was 47 or 48 the last time I read the evidence.

Q. Would you explain to the court the purpose of the equity officer and the equity committee that was a part of this plan?

A. Yes. That goes in conjunction with what I was speaking about before, an attempt by this board to remain unitary.

* * *

[p. 354] A. Yes. I think, just as music and choir and art and PE are part of helping a middle- and high-school child become well rounded, that extracurricular activities at the elementary level, including boy scouts, girl scouts, honor choirs, brownies, and those types of activities which are held after school are helpful in allowing children to accept leadership and become more well-rounded.

Q. How about the schools in the district that were closed by the board this past year that will not be open next year? I think it's common knowledge that those schools were closed for financial reasons.

But the question I want to ask you is: how were the students attending those schools that were closed reassigned to other schools?

A. Well, I didn't actually work on the reassignment of those schools, but the children, in all the closed schools, as I recall, were assigned either of two ways.

One, where the research department divided the children among the closest schools; or, two, where the parents were brought together with the research department and asked where they wanted their children to go to school.

* * *

[p. 356] The last report that we received indicated that schools in section – in the southern part of section 4-A and B, in this area, those elementary schools need repair, and their recommendation is that we go for a bond issue as soon as possible to generate monies to fix roofs and toilets and plumbing, et cetera.

Q. How do the facilities in that area you were just describing, the southeast part of the city, compare with the school facilities in the northeast quadrant, district five?

A. Most of the schools in the northeast quadrant are in fairly good condition. There are only one or two that need as much repair as many of those in the southern sections.

Q. And it is the northeast quadrant that contains some of these schools with 90 percent or more black students?

A. Yes.

* * *

[p. 361] Q. But you would agree that it is possible that the board could change the plan in grades five through twelve in the future?

A. Say that again. I'm not sure I understood.

Q. You agree that it's possible that the board could change the plan with respect to five – from grades five to twelve in the future?

A. By law, a school board may change student reassignments. So, yes, they could change it in the future.

Q. Now, you indicated that the number of PTA units has risen from 15 to 50; is that correct?

A. Yes, That's – well, I'm not sure it's exactly 50. It's 47, 48, and then I know there are some in the process of –

[p. 369] Q. That's right.

A. Okay. and what's the end of the sentence? We could afford it?

Q. No, my question is whether the district could – yes, the district could afford the opportunity to every child within its neighborhood school scheme.

A. By our own policy, we would have to.

Q. I see. But I take it you agree that if that happened that that would mean that there would be overcrowding in some schools, some schools might not have the capacity to accept those students?

A. Well, by our own policy, we have provisions for schools that come to capacity. Then we are – the research department, or whoever is speaking with the parents, encourages the parent to choose another school in which their child would be in the minority so that we would not overcrowd any one school.

Q. Presently there are neighborhood schools which are overcrowded, are there not?

A. I don't believe there are any that are over capacity.

Q. The school district though, in order to meet capacity, is making use of portables –

A. Yes.

Q. – in a number of schools?

A. Yes, but there is still room in the portables and in the [p. 370] other rooms. So they are not at capacity even with the portables.

Q. In fact, there is one elementary school, and I'll have to look up the name, maybe you can help me, that is so overcrowded that it almost doubled its enrollment and they had to use portables? Are you familiar with that?

A. No.

Oh, Mrs. Hill is indicating Green Pastures, a fifth-year center?

Q. Yes.

A. Yes, it's located out here in Star Spencer. It was a very small elementary school, and we had no choice when planning for a fifth-year center. We wanted a centrally-located fifth-year center, and we chose Green Pastures.

And, yes, because of its very small capacity, we had to put a large number of portables on that site.

Q. And there has been discussion about building a new school?

A. A couple of years ago when we did it, yes, we talked about having to build a new school, but we're going to have to wait for a bond issue, and at this time the board has felt that the – that the – the community feeling is not such that we can pass one.

Q. That there's not enough community support for a bond issue?

A. To pass a bond issue at this point. The economy is so [p. 371] low, and the legislature is raising taxes, and it is not timely to ask for more money.

Q. In fact, the district has had to sustain a number of cuts from state aid or in state aid; isn't that correct?

A. I can't speak to the state aid specifically, but we have had six-and-a-half-million-dollars worth of cuts last school year, and six-million-dollars worth of cuts this school year alone, and we have not heard from the legislature yet if there are going to be more.

So, yes, we have received large cuts.

Q. What would happen then if the equity committee were to recommend that something had to be done to maintain equity that required a substantial expenditure of funds?

A. Well, they've already done that, which is they want us to go for a bond issue, but they – have also indicated that they realize that we have to do that on a timely, basis, because it costs us a lot of money to set up voting machines, and there's no sense in doing it if you – if you have a sense that it's not going to pass. You read your community first, and then you go for the bond issue. And the equity committee has been very understanding, because they're part of the patron group themselves.

Q. So the ability of the recommendation – the ability of the board, rather, to meet the recommendations of the equity committee is somewhat limited by the ability

of the school [p. 372] district to obtain sufficient funding in a time in which funds are rather short.

A. As it relates to major facility repair, I would agree with you.

As it relates to curriculum or staffing changes or equipment or smaller-dollar items, I would have to say "no," that we would find the money in our budget, because we have line items for equipment and curriculum and textbooks.

Q. Is one of the assumptions of the equity committee, or underlying the equity committee, that there is going to be a close in the gap of academic achievement between blacks and whites as a result of whatever measures are implemented?

A. I'm not sure that's one of their – of the equity committee's concerns. It is, however, a board concern. I'd have to look at their charts to see if it's a part of their concern.

* * *

[p. 385] Q. Well, did the subcommittee or the board direct anyone on the staff to run a simulation which would have provided for equity in terms of the burdens of transportation as distributed on black – among black and white first through fourth graders while at the same time maintaining desegregation?

A. No.

Q. Why not?

A. It was the felling of the committee that – that we were not going to bus black and white children at those early grade levels.

Q. Well, in fact, the board had been busing black children at those early [sic] for quite a while, hadn't they?

A. Yes, and it had become quite inequitable.

Q. Inequitable?

A. Yes.

Q. And one of the things the board could have done to relieve the inequity was to transport white students.

A. Well, in my opinion, that would have made two wrongs, and two wrongs don't make a right.

Q. I see. So it would be wrong to transport black and white students in equitable proportion for desegregation purposes?

A. That is my personal opinion.

* * *

[p. 390] A. Certainly. My children have been bussed up until two years ago, and they have had positive experiences.

Q. And what grades were they bussed?

A. Fifth Grade. And my son, who is in third and fourth, had to be bussed to his local neighborhood school because we lived across a hazardous street.

Q. In fact, there's a lot of busing that goes on in the school district and throughout Oklahoma for non-desegregation purposes; correct?

A. Oh, yes.

Q. And, to you knowledge, does that busing cause any psychological or educational harm to the children who are transported?

A. I don't think so.

Q. When the board adopted the plan in 1984, you were not aware of any educational basis for return to neighborhood schools, were you?

A. It was my opinion, and still is, that educational achievement would be enhanced by going back to neighborhood schools.

Q. On what did you base that?

A. I based that on my own feelings as a parent and being involved in my local PTA or PTO, knowing that I could be in school available for my children. I believe that educationally it is better for a child to have family nearby.

* * *

[p. 394] REDIRECT EXAMINATION

BY MR. DAY:

Q. Mrs. Hermes, you have been asked a lot of questions about the various elements of the 1985 student assignment plan.

I'd like to direct your attention to defendant's exhibit number 96.

MR. DAY: May I approach the witness, Your Honor?

THE COURT: Yes.

Q. (BY MR. DAY) Would you identify that exhibit, please.

A. Yes. It's entitled "Oklahoma City Public Schools Board of Education Student Assignment Plan for 1985/86."

Q. And is that the final plan that was actually implemented at the start of the 1985/86 school year?

A. Yes. That's correct.

Q. Does it set forth all of the elements of the plan and the other considerations that the board gave in formulating the plan?

A. Yes, it looks like it's rather detailed.

Q. Mr. Shaw asked you about the M-to-M transfers and the equity committee and equity officer.

Did the plan make any provisions for student interaction at these K-4 elementary schools?

A. Yes. The board decided to pair, if you will, those [p. 395] schools that were racially ten percent or more black – 90 percent or more black and ten percent or less black in such a way that teachers could bring students together among those pairings two, three, four times a year for educational activities, particularly.

Q. And was that interaction plan implemented in the 85/86 school year?

A. Yes, it was, and various schools and teachers chose to do different academic offerings.

Q. Was the interaction plan implemented this past year?

A. Yes, it was.

Q. Can you give the court just a basic idea of the type of things that the various principals may be doing?

A. Yes. I'll give you some "what if's," and then I'll give you a situation in which I was there, so that I know for sure it happened.

We were encouraging teachers to allow children to write letters to each other; to send video cassettes of themselves. We were encouraging them to have the children read the same literature; to, perhaps, bring in Artisan Residence for an art class, or maybe a musical fest, or a field day where the children would compete in races.

And, let me think, we did encourage PTA and PTO groups to have their meetings at the paired schools.

* * *

[p. 407] Q. You talked about what the board has done and how the student interaction plan has played out.

How many hours a year would students be involved in a student interaction plan?

A. About nine. Maybe twelve. Three hours for each session, three or four times a year, depending on the age of the child.

Q. Would that include the pen-pal activities, where students write to one another from various parts of the school district?

A. Not necessarily. They could be – those activities, where they would be separate, could be in addition to the hours that I mentioned earlier.

* * *

CLYDE MUSE

[p. 424] Q. Did you ever hold any offices on the board?

A. I served as Vice-President my last year on the board.

Q. During the time when you were serving on the Oklahoma City Board of Education, was a committee appointed to study the K-4 Elementary Schools and stand-alone schools in the district?

A. Yes.

Q. When was that committee appointed?

A. In July of 1984.

Q. And who was on the committee?

A. Mrs. Hill, Mrs. Hermes, and myself.

Q. And what, exactly, did the committee study?

A. We studied the neighborhood racial makeup, we studied potential busing reduction, possible boundary changes, and possible grade realignments.

Q. What was the purpose of this study?

A. To see if we could maintain, first, a unitary system, and, at the same time, see if we could then place K-4 schools in all sections, and particular [sic] the northeast section.

Also to look at the ultimate effect of the stand-alone concept and to see if we could increase pride and parental involvement, and then continue an integrated school district.

Q. What was the problem with the stand-alone school concept that prompted the appointment of this committee to study it further?

A. Whenever a neighborhood reached the racial makeup, insofar [p. 425] as student population is concerned, of the overall district average, then students could not be bussed out of that neighborhood to fifth-year centers, nor could students be bussed into that neighborhood K through four.

So that meant that the children K through four – or one through four who were bussed into a neighborhood that had acquired stand-alone status had to be reassigned, and because of the fact that the stand-alone schools generally were found in the central part of the

district, it meant that the one-through-four children had to be bussed further.

Q. Is there a map which shows this?

A. I think so.

Q. I direct your attention to defendant's Exhibit Number 210 and ask you if that's the map you were referring to.

A. Yes, it is.

Q. Okay. Go ahead with your explanation.

A. Also involved in the –

Q. Why don't you start over with the assignment of the student's under the old plan at grades one through four.

A. All right. The – the top map, I think, shows the assignments of students one through four to the schools that received them, and if you look from the northeast, which would be this section over here, you would see how the children are being bussed out. You would also see the schools that are circled in the center, which are the ones that would achieve [p. 426] stand-alone status first.

So that in order to have a student one through four attend a school for integration purposes, once the schools in the inter part of the district achieves stand-alone status, then you had to send the child further in order that he could be assigned to a one-through-four school.

The same thing is true with respect to the white fifth graders that were bussed into the fifth-year centers. Once

their district or their neighborhood achieved stand-alone status, they no longer could be bussed in.

So we had a diminishing population insofar as white students was concerned, and what that did was threaten those existing fifth-year centers – which were the only elementary schools in the black community – it threatened those schools with closing, because they could not be operated in a cost-effective fashion.

Q. Did the – how long did the committee meet? Over what period of time?

A. From July until the plan was ultimately given to the public in December, I think.

Q. During that period of time, did the committee make specific findings about its study?

A. Well, I'm not certain I understand what you mean by specifics findings.

Q. Well, did they report to the Board of Education what they [p. 427] found as a result of their study?

A. We reported to the board a comprehensive conclusion that involved what our recommendations were, but also why we did not make other kinds of recommendations.

Q. Did you report to the board on your findings with respect to K-5 stand-alone schools?

A. Yes.

Q. And specifically what did you advise the rest of the board?

A. We advised the rest of the board that the K-5 stand-alone arrangement could not continue to be a part of the plan, because what it did was took away from the board the prerogative as to how it was going to deal with and continue the educational offering in the community.

In other words, most schools that became K-4 – I mean became stand-alone, became stand-alone because of the community demanding that they become stand-alone, so that what – with some 13 potential stand-alone schools, what that did was just left the board at the mercy of a given community. Whenever they demanded it, then it had to be implemented or else we could have been accused of showing favoritism, and that would, of course, expedite the breaking down of the original arrangement.

Q. During the period of time the committee was meeting, did any members of the committee consult any government agencies [p. 428] about what they were studying and about their proposed plan?

Q. Yes, I did. I went to Dallas and consulted with the Office of Civil Rights.

Q. Why did you do that?

A. Because I was concerned about whether or not, in the matter of moving to a stand-alone status, if quotas, or if the actual ratios were upset, would this be a matter of concern for the Federal Government. And I was in formed by Mr. McClure that ultimately the government's concern had to do with equity in educational offerings and not with maintaining numbers in terms of the division of the student population.

Q. To your knowledge, was the Office of Civil Rights provided with a complete copy of the plan before the board took final on it?

A. Yes, it was.

Q. To your knowledge, was the Office of Civil Rights invited to come to these board meetings where the plan was being discussed?

A. It was.

Q. Doctor Muse, in your opinion, what are the benefits of the K-4 neighborhood plan?

A. Well, I think that, first, it provides K-4 schools in all areas, and, insofar as the Northeast Quadrant is concerned, it provides K-4 schools for the Northeast Quadrant that did not exist before.

[p. 429] It also provides for fifth-year centers in all parts of the district, as opposed to just being located in the Northeast Quadrant.

The K-4 arrangement reduces the amount of busing that's required.

It provides for an improved program arrangement, particularly with respect to the fifth-year centers, because, with a larger student body, more activities can be offered to all of the fifth-year centers as opposed to, when you have a K-5 stand-alone system, you have a smaller fifth-year grade component, and therefore can't have the kind of activities you could have with more students.

I'm convinced that the plan has increased community involvement and support.

Q. Is that – you say community involvement and support. Do you feel that it has increased black community involvement and support?

A. Yes. I think that the involvement of black patrons has increased.

* * *

[p. 431] A. Yes. There were three that preceded me. Doctor Moon, Mrs. Freddy Williams, and Mrs. Shirley Dorrough.

Q. And were each of the those individuals elected for district number five, the Northeast Quadrant of the district?

A. Yes.

Q. Doctor Muse, in light of the fact that you have a Phd in education, in your professional opinion is the board's 1985 student assignment plan, calling for neighborhood schools in grades K through four, educationally sound?

A. Yes, it is, very definitely.

Q. As a member of the black community, in your opinion does the Board's 1985 neighborhood plan discriminate against black pupils?

A. No, its does not.

Q. In your opinion, does it discriminate against black teachers?

A. No, it does not.

Q. In your opinion, does it discriminate to people living in district five?

A. No, it does not.

MR. DAY: Thank you.

CROSS-EXAMINATION

BY MR. BARBER:

* * *

[p. 432] Q. And, as I understand your concerns then, you were concerned about the diminishing school closures in the Northeast Quadrant; is that correct?

A. No, that's not correct. What I was concerned about was that the schools in the Northeast Quadrant, that the closing of them would actually be accelerated, not diminished.

Q. Okay. This was an imminent fact, was it not?

A. Yes.

Q. Schools were going to be closed.

A. Right.

Q. And what you had in the Northeast Quadrant where the fifth-year centers; is that right?

A. That's right.

Q. And you had a problem also with the Finger Plan, as I recall your position, in that it was a unilateral burden of busing.

Was that your position with the Finger Plan?

A. That the – That the major part of the busing burden, grades one through four, had to be borne by blacks.

Q. All right.

A. That was the concern.

Q. And, as I recall your position also, you were trying to find a solution to the problem of the Northeast Quadrant maybe [p. 433] waking up one morning and not having any schools.

A. Right.

Q. And you did not oppose an equal burden of busing white children as busing black children, did you? You were not opposed to that?

A. No. I think my testimony shows, Mr. Barber, that I did not and am not opposed to the equal distribution of the busing burden. At the same time, however, my testimony showed that I had some concerns about whether or not an attempt to do that would be feasible.

Q. Right. And, as a matter of fact, you didn't think that that could be done.

A. That's right.

Q. You didn't think that your Board would act on that.

A. I didn't think it had anything to do with the board. I didn't think that it would be received in the community.

Q. Okay. And when you say "received in the community," you're speaking of the white community?

A. Yes, sir.

* * *

[p. 435] Q. Your plan was passed on what, December 17th?

A. Right.

Q. Okay. Now, are you saying at that last meeting that you met with the ministers and the NAACP that you didn't promise them that you would go back to the board and try to get a continuance of the matter?

A. I never made that kind of commitment to them.

Q. Okay. So if others were to – that were there were to say that you made the commitment, that you would attempt to get a continuance, that would be in error; is that right?

A. That's absolutely correct.

Q. Okay. Now, you testified on direct examination today concerning the purpose of the current plan was to enhance pride and parental involvement; is that –

A. That's one of the purposes. Yes.

Q. Okay. What about is it not equally as important, Doctor Muse, to have pride and parental involvement throughout a child's school days, throughout from K through twelve?

A. It's important insofar as the overall outcome would be concerned. I'm not certain that the value of it is important enough to subject the children, grades one through four, to the kinds of things that they had to indure in order to have it at that early age.

* * *

JOHN FINK

[p. 495] A. I've found the document.

Q. If you would turn to page 29. Are you familiar with this document?

A. Yes.

Q. And it was prepared by the planning, research, and evaluation department?

A. Yes.

Q. Am I interpreting the information on page 29 correctly to indicate that at the time of the December, 1982, Memorandum, – that is, between the years 1978 and '84 – a portion of this Willow Brook attendance area, which has the number 477, was assigned to Willow Brook in grades one through four, and a portion was assigned to Star?

A. Correct. The portion assigned to Star was done so because of traffic hazards. Students – as I understand it or recall it.

Q. And the point of the capacity problem was that if all of those students were reassigned from Star to Willow Brook in grades one through four and other students from the Star Spencer area who might, at the time, have been assigned to Willow Brook, had to go back to the schools in their attendance areas, there would not be capacity either – somewhere. It's not clear. Either in Willow Brook or in the other schools.

A. In the other schools.

Q. Now, one – if, in fact, the stand-alone feature was an [p. 496] inflexible policy that said, "Whenever an

attendance area falls within the racial parameters plus or minus ten percent, fifteen percent, whatever it was, we must make that a stand-alone school," the capacity problem could have been solved by increasing the capacity in schools; isn't that true?

A. Capacity can be changed by adding portables, one example.

Q. So again, one of the factors that the board considered in deciding whether to make attendance areas that qualified according to the racial balance policy into stand-alone schools, was whether it would create capacity problems, and I assume what it would cost to resolve those capacity problems, and that sort of thing.

A. I have only worked with the board with the creation of one stand-alone – semi-stand-alone school, Bodine, and those were two factors which were considered.

* * *

[p. 498] Q. And am I interpreting that language correctly as a suggestion, at least on the part of the research staff, that stand-alone schools or additional stand-alone schools might be created if there were modifications to the attendance areas, to the boundaries of the attendance areas?

A. An oprion [sic] if attendance zones were added to – to the definition of the – a neighborhood, yes.

Q. Added or – attendance zones or portions of attendance zones added or subtracted, I presume.

A. Right.

Q. Were modifications made, during your tenure in the research department and to your knowledge, to attendance areas to deal with overcrowding problems?

A. Yes.

Q. Were modifications made, during your tenure in the research department and to your knowledge, to attendance areas to deal with overcrowding problems?

A. Yes.

Q. So that the suggestion here for changing attendance areas was not something totally foreign to the way in which the school system had operated?

A. Every time a reassignment was made, attendance zones or areas were altered.

Q. And could you read the following paragraph?

A. "Regarding the schools which do not qualify as stand-alone, different grade configurations, such as grades K-1, -2, and -5 at the fifth-year centers may be an option. If so, should this be considered at all fifth-year centers or only those where we would want to reassign because the membership [p. 499] would be below 200 or to improve the racial balance?"

Q. So, at least in this memorandum, the research staff suggested the possibility of adding grades to the fifth-grade centers, which at that time were all located in the Northeast Quadrant of Oklahoma City; is that correct?

A. Yes.

* * *

BETTY HILL

[p. 511] Q. (BY MR. DAY) Did any leaders in the back community [p. 512] appear that evening and state their views to the board?

A. Yes, they did.

Q. What's the name of the people that came, or the person?

A. Well, of course, we had Leonard Benton who came and spoke that evening, and he –

Q. What – just read what the board minutes say about what Leonard Benton said.

A. Okay. ? "Leonard Benton, President of the Oklahoma City Urban League, said that when the original plan was developed it was unfair in that black children had to be bussed grades one through four and white did not. He said that if we are going to have two-way busing, then students should be allowed to stay in their own neighborhoods."

MR. CHACHKIN: Excuse me, could I ask that Mrs. Hill read the last sentence again? I think you left out one word that's fairly critical.

THE WITNESS: "He said if we are not going to have two-way busing, then students should be allowed to stay in their own neighborhood."

* * *

[p. 515] Q. As an educator and a member of the board, do you have an opinion as to whether or not parental involvement has an effect on academic achievement of students?

A. Yes, I do.

Q. What is your opinion?

A. I – in fact, all the literature that we get and the magazines that we read, it does say that parental involvement is very important in a child's education.

Q. Did the Oklahoma City Board of Education take any action after you came on the board in 1976 to try to increase the level of parental involvement in the district?

A. Yes, we did. One of the things that a neighborhood school – mine I know did, Kaiser – was that for the PTA meetings, which were normally held of an evening, and it was very hard for the – for the black patrons to come from the east side, a bus was provided for them to come to those activities, and it was not a successful venture.

Q. You mean the School Board sent a bus over?

A. No, the PTA did that.

Q. The PTA sent a bus over?

[p. 516] A. Yes, to try to involve them more in the activities.

Q. And that still didn't interest them?

A. It still did not work.

Q. Did the board do anything else to try to improve parental involvement?

A. Well, I think we were constantly trying to encourage people to come, and some of our principals, too, were trying to get parents to – to help them out,

because there are many areas of volunteerism where they can help. And we just really need the parents to be a successful school system.

Q. Do you recall any occasions where the board actually would move their regular meeting – excuse me – their regularly-scheduled meetings from the administration building out into various – different parts of this community?

A. Yes. We did take our board meetings once a month or maybe once a quarter out to the various sections of Oklahoma City and hold our meetings there so that the people could come to the board meetings and have a – have a part in them if they so desired. And, there again, the attendance became so scarce from the neighborhood, and it was rather expensive for the board to go out to those areas by the time they took all of their electrical equipment and all, that we did do away with that.

* * *

[p. 518] Q. – to satisfy counsel.

What has been the result, Mrs. Hill, or all of the efforts and actions taken by the Oklahoma City Board over time to increase parental involvement?

A. I don't believe we've had any success in involving parents.

Q. Since the time that the K-4 neighborhood plan was implemented two years ago, have you, as a board member, personally observed what you feel is an increase in parental involvement?

A. Yes, I have observed a parental increase in involvement.

Q. Tell us about that.

A. Probably last year. I can give an example of two schools, [p. 519] one on the east side and one in my own neighborhood, where I was invited to a program.

And I had attended this school – had been invited to – it was to Creston Hills. And I had been invited to a program there when it was a fifth-year center. I was invited again when it was a K-4.

And I was invited to a program. It was of a morning. I went into the school, was surprised, really very shocked to see that the halls were full and the auditorium was full of people, and they kept trying to bring in chairs and bunching up. So I – to that – for that program that morning, it was a standing-room-only performance. And so the patrons – our patrons, grandparents, neighbors, had all come this this [sic] program.

Q. What was your reaction –

THE COURT: Mr. Day, let's take a recess for ten minutes.

MR. DAY: All right.

THE COURT: We'll take a ten-minute recess at this point.

(A recess was had, after which the following proceedings were had.)

THE COURT: Okay, you may proceed.

Q. (BY MR. DAY) Mrs. Hill, at the recess you were telling us about your own personal observations of increase in parental [p. 520] involvement, and you told us about an experience at Creston Hills.

A. Yes. The other school I mentioned was Kaiser, and I was invited there to a program. It was of an evening, however. And when I went to that school, there again, the auditorium was packed, standing room only. I think one of the teachers commented later that this was the first time she could ever remember when every student that attended that school was in attendance at the program, they all had a part in the program, and by neighborhood schools it meant that the children could come to the school, and if for some reason the parents couldn't come, maybe a neighbor could come with them, but then they could still walk home and be home before dark.

Q. When was that?

A. It was at the end of the first year that we had done the K-4 neighborhood schools.

* * *

[p. 526] Mr. Day may have covered this, but let me be sure I have your answer.

Would you describe the board's justification or reason for adopting the 1985 student reassignment plan and going back to neighborhood schools in grades one through four?

A. Ever since I have been on the Board, patrons have – have come before the Board, have approached me about – about their concern for busing. It's been black

and white across the deal that have said, you know, "what can we do to do away with some of the busing; have our kids closer to home?" One of the things, of course, was that they wanted the fifth-year centers closer to home. So these were the things that had been – the community had been saying to us all these years.

We were very concerned about parental involvement. There just really was none. And I really think in all the many articles I've read that we felt like that parental involvement was very important, that the parents needed to be involved in the schools, so that as we talked about home work, they – they could reinforce some of these things.

* * *

[p. 528] A. I really was addressing the next plan when I introduced that, so my answer pretty much duplicated itself.

Our patrons, our communities, had been told since '72 that, if they became integrated, they could have a neighborhood school, and they could not understand why they had followed exactly what the court had said and the board was not giving them their K-5 schools.

Q. So you're suggesting that the subcommittee felt a total moratorium on the creation of any additional stand-alone schools was not desirable because the community had been told at some prior time that stand-alone schools would be created?

A. Yes, in '72, the Court Order said that.

Q. Do you agree with Mr. Fink's responses to my questions that there was – it was not automatic that

stand-alone schools would be created, that the board had to make that decision in individual instances, taking a number of factors into account?

A. That is correct. It did have to be by board action.

* * *

[p. 530] THE WITNESS: Yes. '85.

THE COURT: 85/86?

Has that, in any way, in your opinion, diminished or destroyed, to any degree, the unitary school system?

THE WITNESS: It has not.

MR. CHACHKIN: Excuse me, Your Honor. I'm very reluctant to address the court with respect to the court's questions, but it seems to me –

THE COURT: Well, this is the question that the court's got to answer.

MR. CHACHKIN: I certainly agree with you, and I think that it is a question for the court to answer. It's a question of law. It's one of the questions that the Tenth Circuit has indicated that the court must respond to. And I don't think –

THE COURT: How could I respond to it unless I know what the evidence shows?

MR. CHACHKIN: Well, with all due respect, I don't believe that it's an appropriate legal question to ask the opinion of a lay witness, and particularly a school board member, about.

THE COURT: Well, she's had eleven years of the school board activities, and that should almost – in my opinion does make her somewhat of an expert.

* * *

MARIDYTH MCBEE

[p. 534] DIRECT EXAMINATION

BY MR. DAY:

Q. State your full name and occupation for the record.

A. Maridyth Montgomery McBee. I'm a Senior Research Associate with the Oklahoma City Public Schools.

Q. What is your educational background?

A. I have a bachelor's degree in Psychology from Oklahoma State University, I have a master's degree in student-personnel guidance counseling from Oklahoma State University, and I worked for a year on my doctrine in Educational Measurement at Oklahoma State University.

Q. And you do have a masters?

A. Yes.

Q. Ms. McBee, how long have you been employed by the Oklahoma City District?

A. I came in the fall of '78 to the planning, research and evaluation department. I have been there since '78, with the exception of 1984 when I was not employed there.

Q. What are your current duties in the research department?

A. Well, mostly I respond to questions that require data or studies concerning either evaluation or planning policy [p. 535] questions raised by the cabinet or the board.

Q. Is there any particular area in the research department that you specialize in?

A. For a time, I was the planning team leader. Right now, at my job as Senior Research Associate, I do both planning activities and evaluation activities.

Q. Has the research department prepared documents showing the retention ratios between students in the fourth and fifth grade in this district?

A. Yes.

Q. I'd like to direct your attention to exhibit 32.

MR. DAY: May I approach the witness, Your Honor, –

THE COURT: Yes.

MR. DAY: – and assist her in this.

Q. (BY MR. DAY) 32.

A. Okay.

Q. Would you identify that exhibit, please?

A. Yes. This is a document that I prepared last spring entitled "Retention Ratios From Fourth To Fifth Grade By Race."

THE COURT: What's the number of this?

THE WITNESS: It's exhibit number 32.

Q. (BY MR. DAY) And you prepared this last spring?

A. Yes.

* * *

[p. 537] THE COURT: Then let the record show exhibit 32 is received in evidence.

Q. (BY MR. DAY) Ms. McBee, as a research specialist with the Oklahoma City School District, do you see any special significance to the retention ratios in this exhibit over time?

A. It's obvious to see that the number of black students who were fourth graders and then subsequently become fifth graders is very similar. There are almost the same number in fourth grade as fifth grade.

For the others, that was the case in '71. However, since '71 we have lost substantial percent of non-black students from fourth to fifth grade until 1986 when the number – the percent retained is higher.

Q. Do you have an opinion as to why that's occurred?

A. Well, I would assume that the students that had a choice preferred not to go to the fifth-year center during the time when the numbers were going down, and now that they're not, that is no longer the case.

Q. You're saying the non- –

A. The non –

Q. – -black students that were going to the fifth-year centers?

A. Right. Right. The non-black students.

Well, maybe I should say the district was experiencing losses in the fifth grade, and we just assumed it's because the [p. 538] parents of the children chose not to send them to our schools.

Q. Have ratios been done at the other grade levels?

A. Yes.

Q. Are they as significant as these?

A. We do retention ratios every year for – for student enrollment projects.

Basically, the enrollment for our black students has been very stable. The number for the whole district, as well as the number from grade to grade, has stayed almost the same from the early 70's to present.

We have had substantial losses in our non-black population, and this is reflected from grade to grade. However, the losses is more substantial from fourth to fifth than it would be from first to second, second to third, et cetera.

Q. I'd like to direct your attention to exhibit 33. Would you identify that exhibit, please?

A. This is a five-year history. It's a bar graph that shows the number of students in fourth grade, and then the next year fifth grade, and the next year sixth grade,

and it goes from the year '75 through '77 through the year of '79 through '81.

Q. What was the data source used for that exhibit? Do you know?

A. It was the end-of-first-quarter membership report for each of the years and for each of the grades that are identified here.

* * *

[p. 540] MR. CHACHKIN: I have no objection, as long as Ms. McBee has checked the figures, as she said.

THE COURT: Very Well. Let the record show Exhibit 33 will be received in evidence.

Q. (BY MR. DAY) Do you see anything significant about the results reflected in this exhibit?

A. Well, what it shows is, from the number of students we had in fourth grade, the next year the number of students we had in fifth grade is quite a bit lower, and in some instances we gain a few students the following year in sixth grade, in some instances we do not. We maintain the loss.

MR. DAY: That's all I have. You may cross-examine.

MR. CHACHKIN: We have no questions, Your Honor.

THE COURT: No questions of this witness? You may step down.

(Witness excused)

THE COURT: Call your next witness.

MR. DAY: Mr. Vernon Moore.

Vern Moore, (a black male) being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follow:

DIRECT EXAMINATION

VERN MOORE

* * *

BY MR. DAY:

[p. 542] A. Yes. I'm on the Superintendent's Cabinet.

Q. How many people are under your supervision and control?

A. I have 26 people that I supervise.

Q. And are you also ultimately responsible for all personnel in the school district?

A. Yes.

Q. Including principals, teachers, custodians?

A. Yes. The employment and maintaining of the training opportunities for all employees in the district.

Q. And do you also participate in the interviewing and hiring of employees?

A. Yes. Our board policy requires my direct involvement at certain levels of employment. On the level of administration, I am involved.

Q. In your opinion, at this point in time is the administration integrated?

A. Yes, it is.

Q. Are there other black people besides yourself that hold upper echelon administrative positions in the district?

A. Yes.

Q. Would you give us their names and position, please?

A. Well, as I indicated, on the Superintendent's Cabinet there are three other individuals that also participate on the cabinet, and that is the Director of Middle Schools, Gloria [p. 543] Griffin, Director of Elementary Schools, Sylvia Lyon, and Doctor Betty Mason, who is the Assistant Superintendent for Instruction and Related Services that supervise those directors that I identified.

Q. What did you do in the district before 1984?

A. I was director of middle schools and fifth-year centers.

Q. And when did you first take that position?

A. I took that position in July of 1978.

Q. So as of July of '78, you would have been working out of the central office in the administration?

A. That's correct.

Q. Since that point in time, Mr. Moore, July of '78, has the administrative staff of the Oklahoma City Public Schools been integrated?

A. Yes, they have.

* * *

[p. 548] So the main aspect of the plan was to deal with the transfer of over some 500 teachers and give them some opportunity to identify places that they would like to be assigned to other teaching assignments. We felt that if we allowed them the opportunity to identify areas that they would like to be assigned to, that we would be able to hold on to what we considered to be some very good teachers in the district, and I think we were successful in accomplishing that.

Q. What does the agreement say with respect to where a teacher will be assigned or how that will be determined?

A. Well, what we – we developed what we call a profile sheet, and all the persons that had been identified for transfer were provided an opportunity to fill out the profile sheet, and on the profile sheet they could give us their preferences on where they would like to be assigned based upon the vacancies we had.

Q. What determined which teacher got to go where?

A. Well, what we first identified was first by preference and then by the length of time that the person had been in the district. We refer to that as unbroken service in the [p. 549] district.

Q. Is that also referred to as seniority?

A. Yes, sir, it is. That's correct.

Q. So, under this agreement, a teacher that had been in the school district longer had a priority choice over where he or she wished to be assigned that following year; is that right?

A. That's correct.

Q. And if that position was available, it had to be honored under the agreement?

A. That's correct.

Q. Mr. Moore, after all the dust settled and all the teacher assignments had been made pursuant to this agreement, what – what did we end up with in the Oklahoma City District with respect to faculty assignments in the school year 85/86?

A. Well, what we ended up with were people assigned to buildings that they wanted to be assigned to. More so than any – any other factor, that really was the thing that we had. Everyone that – we had over 75 percent of the persons transferred received their first choice. So that was a very good indication to us that people were assigned into a position that they wanted to – that they had chosen.

Q. What was the picture this past year?

A. As it relates to the assignments, that really didn't change that much.

* * *

[p. 552] A. The information that I compiled here is for the school year for 86/87 and then projecting it –

Q. Okay.

A. – for 87/88.

Q. All right. So you have it for the past year and projected into next year?

A. Yes. That's correct.

What we have in the schools that have been identified with 90 percent or more black students, in 86/87 we have all – the schools have six white administrators and four black administrators, and the composition next year, in 87/88, it will be seven white administrators and three black administrators.

Q. And what is the situation at the elementary schools that have a less-than-ten-percent black student population?

A. The composition for 86/87 was – it appears to be ten white administrators, one black, and two Indian.

And for 87/88, that composition changes to four black administrators, seven white administrators, and one Indian administrator.

Q. Mr. Moore, has the Board of –

Excuse me. Do you need a drink of water?

A. Yes, please.

MR. BARBER: Here you are.

THE WITNESS: Thank you, Mr. Barber.

A. The percentage that we're looking at are as a result of some of the changes. In 86/87 school year we had 28.1 overall black administrators. In 1987/88 it would have been an overall percentage of 29.2 black administrators. And this is all on the elementary level.

Q. Do I understand correctly, sir, that, although the faculties at the elementary schools are not all perfectly

racially balanced, that they do remain integrated and racially mixed?

A. That's correct.

Q. Has the Board of Education taken any recent action to address the question of racial balance amongst the faculty at the elementary schools.

A. Yes.

Q. Would you tell us about that?

A. In the meeting, I believe, on April 22nd, it was indicated that there would be some very strong building-level goals that building administrators will be held accountable for as it relates to maintaining the racial balance in the school and meeting the affirmative action goals.

* * *

[p. 555] Q. (BY MR. DAY) Would you identify that document, please.

A. Yes. This is a tentative agreement of a memorandum of understanding that was entered into by the Board and the OCFT, who is the teacher's union for the Oklahoma City Schools, dated March – excuse me – April 21st, 1987.

Q. In that agreement, what was the primary consideration that determined where a teacher from a closed school would be transferred?

A. The indication here, and this primarily addressed only transfers as opposed to '81 and '85. The idea here is to transfer teachers to meet the affirmative

action goals of the Board. We wanted to give consideration to a person's experience and time in the district, and we did that as long as the transfer did not impact the affirmative action goals of the district in a negative way.

Q. Did the Board do anything else to address the issue of teacher assignment for the coming year, aside from this agreement?

Maybe not only the Board, but you, as the Executive Director of Personnel, were you –

A. I think one of the things that happened as far as the Board, through the Superintendent's direction, that we'll all be going as a result of this language, is to make sure that the concern that – how people were assigned in '85 did not occur again. And so I think as far as influence that was indicated [p. 556] through our Board is the fact that, you know, through personnel and all other building administrators, that persons would be assigned based upon affirmative action.

Q. Since this memorandum of understanding was entered into this past spring, and based upon what you've been able to do as Executive Director of Personnel, have you prepared projections for what the composition of the faculty will be at the schools next year?

A. Yes. We have some actual assignment data that we're proceeding with, as well as development of some simulations that we think we can accomplish.

Q. We have listed as Exhibit 199 the original projected assignments, I think, that we had that you prepared probably a month or so ago.

A. Yes.

Q. And between that time and now, I take it there have been additional changes.

A. Yes, we have had some changes.

Q. We will take the appropriate action to substitute that exhibit and provide –

Do you have a copy?

Do you have a copy, Mr. Moore?

MR. CHACHKIN: I'll give this back to you.

THE WITNESS: It's in my notebook.

Q. (BY MR. DAY) Mr. Moore, is Defendant's Exhibit 199, which [p. 557] we've just had marked and handed to you, a true and correct copy of your updated projections for faculty assignments next year?

A. Yes, it is.

Q. And, without going into a lot of detail, can you just explain to the court, in general terms, where you anticipate that we will be next year on faculty assignments?

A. When we look at the elementary schools and the availability of applicants and availability of existing staff, teachers that are on non-continuing contract status for us, what we are projecting is that we'll be in compliance in almost all of the elementary schools by August of '87.

Q. And what is compliance?

A. Compliance in making reference to the Board Policy on Affirmative Action, which could be 36.9 with a ten-percent variance either way.

Q. So it would be 36-point –

A. – point-9.

Q. – point-9 plus or minus ten percent?

A. That's correct. Some schools could be at 26.9, and others could be at –

THE COURT: What are you talking about, white teachers?

THE WITNESS: No, sir. Making reference – well, it depends on how the school's identified. It could [p. 558] be white teachers, if you're talking about those schools in the –

THE COURT: Well, is this the ratio throughout the school system?

THE WITNESS: The ratio throughout the school system?

THE COURT: Yes, sir.

THE WITNESS: Yes, sir. But I'm making reference to the black teacher composition.

Q. (BY MR. DAY). The affirmative action goal; is that correct?

A. Yes, that's correct.

Q. Well, but that's at all schools, all elementary schools, is that right?

A. All schools. That's what I'm saying.

Q. All of these K-4's.

A. Yes.

Q. They'll be between plus or minus ten percent of 36.9 percent blacks; is that right, sir?

A. That's correct.

Q. And, in your professional opinion, do you think that goal will be reached by next fall?

A. Yes.

Q. Do you think there'll be any schools out of compliance?

A. Based upon what we're looking at, we think that we can accomplish that. If the –

[p. 559] Q. Have you already made these assignments, Mr. Moore, a lot of them?

A. Yes. We have made several assignments that have brought us – from the time the simulation was developed to the point where we are now.

Q. Was the closing of these seven schools an advantage to you in terms of redistributing the teachers in the district?

A. It was to a great extent, because that provided us a number of black teachers to assign to those schools that were out of compliance.

* * *

[p. 566] REDIRECT EXAMINATION

BY MR. DAY:

Q. Mr. Moore, in your opinion, has the Oklahoma City Board of Education discriminated against any minority teachers in the Oklahoma City District as a result of the implementation of the K-4 neighborhood school plan?

A. Absolutely not.

* * *

[p. 570] THE COURT: Mr. Moore, the court would like to inquire of you, from your experience, your knowledge, your education, do you have an opinion as to whether or not the Oklahoma City School District is now and has at all times since the Finger Plan operated as a unitary school system?

THE WITNESS: Yes, sir, we have.

THE COURT: What is that opinion?

THE WITNESS: Well, given the fact that we've set up the kinds of programs that are equal to everyone, all students, as it relates to the extracurricular activities, the language that we've put together any time we've had any kind of mass movement to really address the needs of all students, and they were never separated or set aside for any reason, for any indications of race.

THE COURT: Does this opinion include the K-4 program or plan that you have established for the past two years?

THE WITNESS: Yes, it does.

THE COURT: Do you have an opinion as to whether or not the dual – the unitary school system could, even if the school board wanted to, revert to a dual school system?

THE WITNESS: No, sir, I do not believe it could, primarily because of the persons and the people that are involved in the operation of that school district.

THE COURT: Very well. Any further question of this witness?

* * *

BETTY MASON

[p. 576] Q. Doctor Mason, in your professional opinion, being familiar with the plan and having been responsible for its implementation, do you believe that the plan discriminates against minority pupils?

A. I certainly do not.

Q. In your opinion, does the board's plan in any way discriminate against minority teachers?

A. No, it does not.

Q. Or minority parents?

A. No, sir.

Q. In your opinion, was the plan implemented in a non-discriminatory fashion?

A. It most certainly was.

Q. Did you insure that?

A. With everything that I possibly could. Yes, sir.

* * *

[p. 578] We require systematically that they forward that information to our offices at the end of those times. This information was compiled from that data.

Q. Have you doublechecked this exhibit to make sure that the data is correct?

A. Yes, I have.

* * *

[p. 582] In 1983/84, the membership went to 2,000. Right at 2,000.

84/85, our membership was more like 1500.

85/86, we went up to about 2500.

And 86/87, we went beyond 3,000. I believe this graph will support the data on the previous exhibit.

Q. Where was the data obtained for the years 1981 through 83/84? Do you know?

A. This information came from the State PTA.

Q. And is that the same information that's attached to the original exhibit 140?

A. Yes, it is.

Q. Okay. Would you identify exhibit 139.

A. This exhibit speaks to the number of organizations in the PTA in our district.

It shows here that in 1980/81, we had about 45 PTA units throughout the district.

In '81/82, we had about the same.

In 82/83, our PTA organizations dropped to about 30.

In 83/84, they dropped again to about 20.

In 84/85, we had approximately 15 units.

And then 85/86, we increased to approximately 30.

In 86/87 we went up to about 45, 46 units.

* * *

[p. 584] Q. And is it your opinion that the neighborhood schools are also responsible for the increased open-house attendance and parent-teacher day conference attendance?

A. I most certainly believe that. Again, many parents can walk to their school and do not have to have a second car, if you will, to get to a parent conference.

Q. In your opinion, if the neighborhood school plan is allowed to continue, will we see more of an increase in parental involvement?

A. Based on the visits that I have in my office and the conversations I've had with many community people, it is my opinion, my very strong opinion that we will see many more – many, many more parents giving volunteer service to schools and also aligning themselves with PTA organizations.

Q. Have you noticed any difference in the level of community involvement in the public schools since the neighborhood plan was implemented?

A. Yes, I certainly have, and, if I may speak –

Well, in all of our communities I have noticed an increase in community participation. Wee have the

YMCA's, the YWCA's coming to visit us, asking our support in their beginning after-school programs that they thought were somewhat prohibitive before because children were were not necessarily in the neighborhoods.

[p. 585] We have social groups – social workers coming to us wanting to get into the schools and do special kinds of things with the youngsters whom they consider to be in need of certain kinds of counseling services.

We have the prime time program which has availed itself to use to have after-school care for children.

It appears that many organizations recognize that youngsters are close at home, will be turned out of school as early as 3 o'clock in the afternoon, need something to do with their time, and they are coming up with all kinds of ideas to respond to that need.

Q. Are you familiar with the adopt-a-school program?

A. Yes.

Q. Would you explain that for the court?

A. The adopt-a-school program is a cooperative effort between our – the Oklahoma City school district and the chamber of commerce wherein many businesses are encouraged to give support to the local school district. They do that through different kinds of services.

Q. And, since the neighborhood plan was implemented, has there been an increase in community participation in the adopt-a-school program?

A. Yes, there has.

Q. In your opinion, is the neighborhood school plan in any way responsible for any part of that increase?

[p. 586] A. In my opinion, the neighborhood school plan gave a new focus, a new excitement, and a new direction to the community in relation to education, and it has caused as – just as it has caused parents and other agencies to get involved in our school, it has most certainly caused many businesses to become involved in various ways. There seems to be a new excitement about the Oklahoma City schools.

Q. I take it then you feel the plan is educationally sound?

A. I very definitely feel the plan is educationally sound. I think that the early years of a child's life are so important that we need to provide the absolutely best opportunity for our youngsters that we can.

Q. Do you believe that this neighborhood plan in any way discriminates against black students or parents?

A. No, I do not believe that.

Q. Do you believe that it discriminates against black teachers?

A. No, I do not.

* * *

RECORD, VOLUME V

[p. 609] Q. You would agree, wouldn't you, that it's possible to implement an adopt-a-school program in a desegregated school to which students are transported?

A. Yes, I would agree to that.

Q. And I take it you would also agree that majority-to-minority transfers don't do anything or haven't done anything to desegregate the schools which are located in the northeast section of Oklahoma City?

A. I would agree to that.

MR. SHAW: One moment, please.

That's all, Doctor Mason. Thank you very much.

REDIRECT EXAMINATION

BY MR. DAY:

Q. Doctor Mason, Mr. Shaw, in cross-examination, was talking with you about the decline in PTA membership in the district over time, and you said that you had an opinion as to what you believe was the reason for the decline of parental involvement in the predominantly white schools while the Finger Plan was in operation.

Would you tell us what your opinion is in that regard?

A. Recognizing that for some years now there has been a negative perception of what goes on in our schools, in spite of all the efforts that our district has

made, we suffered the [p. 610] problem of getting parents into our buildings because of that negative perception, and that crossed all color lines. This was not a situation that was peculiar to one race. And I believe that that had a direct effect on the lack of parent participation in P-T organizations all over this city.

Q. I'd like to direct your attention once again to defendant's exhibit 139, the graph that Mr. Shaw was discussing with you.

A. Okay, just a minute here.

That's right, it's not in this one. I'll have to change.

I have it.

Q. Do you have exhibit 139?

A. Yes.

Q. Mr. Shaw was questioning you about the decline in parental involvement shown on this graph starting at the 80/81 school year and continuing down until the 84/85 year.

Do you know if this decline that is noted in the 80/81 year also extends back to the 1970's?

A. Again, I have to give you the benefit of the discussions I have had with persons in the district as well as some of the readings that I have done, and they support the fact that early –

MR. SHAW: Pardon me. Your Honor, this is hearsay, and I'd like to object.

THE COURT: Overruled.

[p. 611] THE WITNESS: I'm sorry.

THE COURT: I think this is important evidence for both sides.

A. – that is prior to those years there was a tremendous amount of parent participation in P-T organizations, and my position only is that what you see here represents only from 1980, and if you were to look back further, you would find that those figures are declining figures.

Q. (BY MR. DAY) Okay. Let me direct your attention to exhibit 140, page 2. That is the letter from the president of the Oklahoma State PTA Organization –

A. Yes.

Q. – That you referred to when – while Mr. Shaw was cross-examining you.

A. Yes.

Q. Does that letter show what the PTA membership in the Oklahoma City Public Schools was as of 1969?

A. Yes, it sure does.

Q. And what was the number of units, PTA units in this school district as of 1969?

A. This letter indicates that there were 95 PTA units in our district in 1969.

Q. And what was the total membership in the PTA units?

A. 26,528.

* * *

[p. 619] The related services address all of the elements that go towards causing those things to happen smoothly within the school district, such as state reports, discipline reports, safety reports, activities of students, attendance records of students, guidance and counseling. Those are the related services that affect schools.

THE COURT: Big job.

Does this entail the entire school system from north to southeast to west?

THE WITNESS: Yes, it does. It entails the entire school district preschool through twelfth grade?

THE COURT: Are you familiar with the order this court made in January, 1977, that the Oklahoma City School system had become unitary?

THE WITNESS: I am familiar with that.

THE COURT: The court will – or do you have an opinion as to whether or not, from your job and your services, your experience and your knowledge, has operated a unitary school system in Oklahoma City at all times since January, '77?

MR. SHAW: Pardon me. Your Honor, again, like my co-counsel, I'm hesitant to object to the court's question, but it calls for a legal opinion which this witness is not qualified to render.

* * *

[p. 625] Now, exhibit 138 and exhibit 139 are simply graphs that show what's in exhibit 140 and the pages attached to it from the state organization. We believe it's

reliable, accurate, and extremely relevant to these proceedings.

MR. SHAW: Your Honor, if I may respond.

THE COURT: Yes.

MR. SHAW: With respect to exhibit 140, although there are open-house figures that the district provided, then the district can substitute another exhibit which contains those figures.

With respect to the State PTA Organization, that is a private entity. The question is not whether they have reasons to inflate or deflate their figures, the question is whether we can know for sure that the figures are accurate, the witness has testified she did not know, and an adequate base has not been laid for the admission of that exhibit, which, therefore, makes the charts also possibly unreliable.

THE COURT: The court will take your objection into consideration. They are in evidence, but you have raised a question as to the authenticity of the exhibits, and the court will consider your objections.

* * *

ALONZO OWENS, JR.

[p. 629] A. I didn't like it.

Q. Why didn't you like it?

A. Because I wanted my child in my neighborhood. That's where I went.

My child was also asthmatic, and she, from occasions – on occasions, had problems. The first time she had a problem, I didn't know where Hawthorne was located,

and it was – it became a serious matter with us, but there was nothing we could do about it.

Q. You felt that if she was at a neighborhood school closer to home that you would have control over the situation?

A. I knew we would have. Yes.

Q. After the neighborhood plan was adopted and –

What grade did your daughter attend, the first year after the plan?

A. Fifth-year center.

Q. Fifth-year center?

A. Yes.

Q. That would have been at Page Woodson?

A. That's right.

Q. Which was close to home; right?

A. Yes.

Q. Okay. As a black parent from the northeast quadrant, do you continue to support the neighborhood plan today?

[p. 630] A. Yes.

Q. Have you noted any increases in parental involvement, participation of parents at school activities since this plan was implemented?

A. Yes.

Q. Can you give us a couple of examples of the type of things you've seen?

A. I have a sister who lives in my neighborhood who has grandchildren, and now that the children are in neighborhood school, her participation has increased. She attends meetings, and so does the child's mother. Prior to that – prior to that, there was no way they could have, work schedule and a whole bunch of other things. They just didn't do it.

* * *

TOMMY B. WHITE

[p. 639] Q. Were there any other reasons that you were in favor of the plan?

A. Well, I liked the idea that they were going to have an equity committee that would assure – act as an oversight committee and would assure us that – of equality and equity within the education of our children and within the school itself and the environment in which our kids found themselves.

Q. At that point in time, did you have a view or an opinion with regard to busing young children grades one through four?

A. I did, and that's one of the reasons that – that I was very strongly in favor of this plan, because I preferred my kids not to be bussed.

Q. When this plan was being proposed by the board, did you view it as being discriminatory against blacks?

A. No, sir, I did not.

Q. And, Doctor White, during the period of time when the board of education was considering the plan and holding the town meetings, discussing the plan with

patrons in the community, did you formulate an organization of parents?

A. I did formulate a group of not only parents but ministers and educators, doctors, and those who were interested in the welfare of our children.

Q. And what was the name of that organization?

[p. 640] A. It was Coalition of Equity – of Excellence and Equity –

Let me – may I refer to my notes, please?

Q. Oh, certainly.

A. Coalition for Equity and Excellence in Education. The acronym was CEEE.

Q. That would be C-E-E?

A. C-E-E-E.

Q. What was the primary purpose of that organization?

A. The purpose of the organization was to promote, as its name implied, equity and excellence in education in the schools within the northeast quadrant, and –

Q. Did that organization –

Well, let me ask you this: were you the chair of that organization?

A. I was what was know as the convenor.

Q. The convenor?

A. Yes, sir.

Q. Could you tell the court the opinion of the Coalition for Equity and Excellence in Education of the neighborhood plan?

A. They fully endorsed it, fully endorsed the proposed plan, at that time proposed plan.

Q. Did the Coalition of Excellence and Equity in Education conduct or undertake a survey in the northeast quadrant concerning patron and parental views on this neighborhood plan?

[p. 641] A. Exactly. We did that.

Q. Could you give us the approximate point in time when that survey was conducted?

A. If I can refer to my notes.

Q. Certainly.

A. Approximate time was around December – the months of December and January of 19- – December, '84, and January, '85.

Q. Doctor White, when you testified before this court in April of 1985, as I recall at that time a survey had not been completed; is that –

A. That's correct.

Q. Was it ever completed?

A. There were other people that signed the petition. But, to be complete, no, not in the terms that we wanted it to be complete.

Q. How many people in the northeast quadrant were actually interviewed, approximately?

A. Approximately? Close to 400.

Q. And have you analyzed their responses?

A. Yes, sir.

Q. What was the question on the petition that was circulated?

A. The petition – may I read the petition?

Q. Certainly.

A. The petition was that – because we would interview the people individually, one on one, discuss the plan as we [p. 642] understood it, let them read our fact sheets, and then the petition read like this:

"We, the undersigned, being patrons, past patrons, and friends of the Oklahoma City School District, do hereby endorse and support the new student reassignment plan for grades K through four as long as our children receive the quality of education we desire, and;

"Number one. Elementary schools re-establish in the black community K through four;

"Two. District-wide desegregation to begin for all students, grades five through twelve;

"Three. Quality teachers, both black and white, specifically grades K through four.

"Our endorsement is based upon the fact that the plan will reduce the inequitable busing burden on all children, especially black children, in the northeast quadrant, and maintain elementary schools within the northeast quadrant."

Q. Now, did you supervise how that petition was circulated?

A. Yes, sir.

Q. Do you have the – all the signatures there on the document?

A. Yes, sir. And then, I might add, that there were – there were some more signatures to come, but one of the petitioners is no longer with us, so it's difficult to get that.

Q. Well, do I understand you correctly, Doctor White, that [p. 643] 400 black patrons in the northeast quadrant of the district signed the petition to support the concept that's stated on its face?

A. Approximately 400 did and accepted the – the – as I've stated on the face.

Q. At the time the CEEE Coalition was in operation, did you have a view or an opinion as to whether or not a neighborhood school plan, grades K through four, would cause an increase in parental involvement in the schools?

A. Very much so. We felt that very much so. In fact, that's what was lacking. I sent my school – my kids to a neighborhood school, and the neighborhood school happened to be a private school, and, basically, it was because we could have involvement within the school, because our kids, the way the plan was set up, would have to attend a school in Roosevelt, which was a great distance from our home and from our community.

* * *

[p. 650] Q. When we talk about busing in a pejorative sense, would it also be correct to assume that we are talking about busing for desegregation purposes?

A. I'm not against –

Let me say something, if I may. I'm not against busing at levels five and above. I'm against busing K through four, period. Those are formative years, children are young, and that's what I'd like to deal with, because that's what our [p. 651] coalition dealt with.

* * *

[p. 678] REDIRECT EXAMINATION

BY MR. DAY:

Q. Doctor White, Mr. Shaw examined you about the existence of some predominantly black schools in the northeast quadrant.

Is it your understanding under the neighborhood plan that where a child goes to school in Oklahoma City is based on where that child lives?

A. Yes, sir.

Q. As of this time, are you aware of the extent that black people have elected to live in other parts of the Oklahoma City District aside from the northeast quadrant?

A. I'm acutely aware.

Q. In your opinion, sir, are there any governmental barriers today which compel blacks to live in the northeast quadrant?

A. None whatsoever.

Q. So those people are free to move and go to school where they want; isn't that true?

A. Exactly.

Q. And the CEEE Organization, at the time they supported this plan, was aware of the majority-to-minority transfer option that the board was offering; isn't that true?

A. I believe that to be true, sir.

[p. 679] Q. And did you understand under that option that the parent of any child who is attending a school where the child's race was in the majority had a chance to transfer to a school where the child's race would be in the minority?

A. We were very aware of that.

Q. And that the board of education would pay for the transportation?

A. I'm aware of that.

Q. In light of these factors, doctor, in your professional opinion does the board's K-4 neighborhood plan discriminate against any black students in this district?

A. Not in my opinion, sir, at all.

Q. In your opinion, does it discriminate against any black parents?

A. In my opinion, it does not.

Q. In your opinion does it discriminate in any way against anybody?

A. Not in my opinion.

Q. Notwithstanding the question from Mr. Shaw about the methods that you used in circulating this position – petition, is it your professional opinion that the results stated in this petition is reliable?

A. Yes.

Q. Are reliable?

A. Yes, sir.

* * *

[p. 681] MR. DAY: Thank you, Your Honor.

Nothing further.

THE COURT: All right. Any further question of this witness?

MR. SHAW: No, Your Honor.

THE COURT: Are you familiar with the – do you have an opinion as to whether or not, under the Finger Plan, the Oklahoma City School District became a unitary school system? Do you have an opinion?

THE WITNESS: No, sir, I do not, sir.

THE COURT: All right.

MR. SHAW: Objection, Your Honor. That draws a legal conclusion?

THE COURT: He has no opinion.

You may step down.

* * *

CAROLYN HUGHES

[p. 682] Carolyn Sue Hughes, (a white female) being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. DAY:

Q. Doctor Hughes, would you state your full name for the record?

A. Carolyn Sue Hughes.

Q. What is you occupation?

A. I'm Assistant Superintendent for curriculum and program development at the Oklahoma City Public Schools.

Q. When were you first employed by the Oklahoma City School District?

A. In July of 1986.

Q. What is your education background?

A. I have a bachelor's degree from Miami University in Ohio, a master's degree from Miami University in Ohio, and a PHD from Kent State University, also in Ohio.

Q. What are your duties and responsibilities in your present position with the school district?

A. My responsibilities are basically to insure that adequate attention is given to the planning and delivery of curriculum.

* * *

[p. 685] The criteria I set was that I wanted to work in an urban district, I wanted some responsibility for curriculum, and I wanted to be in a district where there were a significant number of minority children.

The reason for that was perhaps a little selfish, because I'm convinced that the quality of life that my grandchildren will have will be heavily impacted by how well we educate minority youngsters.

Q. Are you familiar with the effective schools concept?

A. Yes, I am.

Q. Before you came to the Oklahoma City District, what did you know about effective schools?

A. Probably my first contacts with it go back to the early 80's when, as part of the association for supervision in curriculum development program, I had direct contact with Ron Edmonds and Larry Payzant, both of whom are researchers in the field, Edmond no longer among the living but having made a major impact. I knew that from his research we could do a far better job than many schools are doing in the education of minority youngsters, the basis of that research being that there do exist schools in which there is a high degree of achievement for both majority and minority youngsters, for both affluent and less affluent students. I knew that the correlates of effective schools included instructional leadership on the part of the Principal, the safe and orderly [p. 686] learning environment, a strong instructional focus, high expectations for all students, and measurement or the

ability to monitor students' achievement and report those.

Q. After you arrived and started working in the Oklahoma City District, did you find that they had an effective schools program?

A. I was delighted at what I found.

Q. Tell us what you found.

A. The wheels had been – the wheels had been set in motion to do a broad range of staff development for teachers and administrators throughout the Oklahoma City Public School District. That particular program that had been adopted is one that focused on the very correlates of effective instruction that I mentioned earlier, and means had already begun to train a district-level cadre whose task it was to train the teachers in every – in every building in being able to do a better job of instructing students effectively.

Q. What aspects of an effective schools program are most relevant to curriculum development?

A. Probably the ones that are most important are instructional focus. That's probably at the top of the list. Secondly, the monitoring or measurement of achievement. And third, the establishment of high expectations.

Q. As assistant superintendent in the district over curriculum and instruction, where is the Oklahoma City School [p. 687] district headed in the future in this area?

A. Well, we have made some progress even this year, I believe. One of the things that we have done in

clarifying our instructional focus has its strongest impact on kindergarten through fifth grade.

What we've done there is to establish, for every single grade level, a set of grade-level essential skills, and we have directed and helped to train teachers across the district in making certain that every student in the particular grade level is given direct instruction in the skills of that grade level.

That has not been, across the country, generally true, but we find, as we look at the research and as we see what people in other major school districts are doing that works, that if we clarify what the expectations are, what the skills are that students are to learn, we make sure parents and students and teachers and administrators all understand those, we're much more likely to make progress.

We're in the process this summer of fine tuning our monitoring system so that we'll be able to report to teachers, students, parents, each student's progress toward these.

Q. Does the research show that an effective schools program can enhance or improve academic achievement?

A. Absolutely.

Q. Tell us a little bit about that.

A. Well, one of the significant research studies, I believe, [p. 688] this year, has been – that has been reported this year was conducted in the state of Washington, and there, when effective school procedures were put in place, there were extremely significant gains on the

part of students in their achievement, and those gains were the strongest among poor and minority students.

In general across the country, we experienced disproportionality in achievement based on socioeconomic and racial differences. Where effective schools are being put in place, those differences are being narrowed.

Q. Across the Oklahoma City School District, is there a uniform curriculum provided at all grade levels?

A. Yes, there is.

* * *

[p. 691] In addition to that, this year, as part of our effective schools thrust, we have done what's called the disaggregation of test data.

Q. What does that allow you to accomplish?

A. Well, the disaggregation of test data is something that's been strongly recommended by some of the urban educators and curriculum leaders across the country. It's a risky thing to do, I might say, because it recognizes that, across the country, there's a disproportionality in achievement by race and socioeconomic level and gender.

Q. So this allows you to concentrate on that gap?

A. This enables us to, one, identify and face up to the gap, and then concentrate on reducing the gap.

Q. In your opinion, will the effective schools program that has been implemented in the Oklahoma City District have the effect of closing the gap between black-white achievement?

A. It's my opinion that that's true * * *

* * *

[p. 693] Q. If this court were to order the operation of the Oklahoma City Public Schools in such a fashion as to desegregate grades one through four in all schools, could you oppose – I mean, I'm sorry – could you impose a plan which would utilize effective schools techniques?

A. Yes.

[p. 695] THE WITNESS: Judgment from what I have seen in this district since I have arrived, and what I've learned about it, we do not have a dual system. Whether or not the Finger –

THE COURT: I wasn't – I hadn't got to that.

THE WITNESS: I'm sorry. I thought that was what you were asking me.

THE COURT: Well, I'd asked you if you're familiar with it, the knowledge of it.

THE WITNESS: Yes, I am.

THE COURT: Do you have an opinion?

THE WITNESS: Yes, sir.

MR. SHAW: Pardon me, Your Honor, may I just take a running objection to –

THE COURT: Yes.

MR. SHAW: – Any questions of this kind –

THE COURT: Yes.

MR. SHAW: – to fact witnesses?

THE COURT: You may.

THE COURT: What is that opinion with reference to whether or not it resulted in a continued dual school system or unitary system?

THE WITNESS: It is my opinion that we do not have a dual system.

* * *

[p. 697] Q. * * * The cost of the imposition of a busing plan could affect the ability of the school district to implement an effective schools program; is that correct?

A. Yes, sir. Yes, sir.

Q. In fact, it would be true that any costs which resulted in substantial outlays of funds could impact upon the school district's ability to provide effective schools programs, couldn't it?

A. Yes, sir.

* * *

ARTHUR WAYNE STELLER

[p. 702] Q. You mentioned effective schools. There's been testimony in this case that there is an effective schools program being implemented in the Oklahoma City District.

Would you briefly describe that program for us and tell us, in your opinion, where this school district is headed in the future with that program?

A. Well, there are five basic correlates to the effective schools program. It's based on, really, the premise that all children can learn, regardless of any disadvantage which they may bring to school.

The first premise – well, it depends on your preference on which you give first, but one of the correlates is that a principal is the instructional leader at his school.

Another one is that there needs to be a positive school climate in each school.

Another correlate is that there should be an instructional focus in the school, concentration on academics.

Another one of the correlates is that you monitor student achievement periodically through standardized tests and other ways to make * * * sure that you know exactly how the student's performing at all times.

And the fifth one is high expectations for students.

Q. Does the research show that an effective schools program [p. 703] can increase academic performance?

A. Very much so. Ron Edmonds, a black scholar, was considered to be the founder of the effective school movement, and he's done extensive research on that. That research has been replicated by others, like Larry Lazod from Michigan, and various other researchers, which has all demonstrated that effective schools can improve the academic achievement of students, and it can also lower the gap and close the gap between black students and white students, or any other minorities or socioeconomic levels, and also gender levels.

Q. How long had the effective schools program been in operation in the Oklahoma City District?

A. Well, we started some things actually last year. But, in terms of meaning – when I say last year, 1985/86. But in terms of really being a full-fledged program that

was up and running, it would be in this past school year, the 86/87 school year.

Q. And have you received any results that would indicate how the program is working?

A. Well, if we simply look at our test scores, we can correlate our test scores to the number of staff members in the various schools who took advantage of the program and completed the instructional effectiveness training program. There is a definite correlation between the number of staff that completed the program and the test scores in those schools.

* * *

[p. 705] Q. Doctor Steller, are you familiar with any of the busing distances involved in Oklahoma City under the old Finger Plan, let's say, from the schools – let's start with schools that are 90 percent or more black – and the schools they were paired or clustered with?

[A]. I really don't have the information on exactly the time and distance factors in the old Finger Plan. I have a general notion. And, looking at a map, I know approximately what the distance would be, but I can't give you the exact numbers.

Q. Can you give the court some examples of those distances?

A. Well, I could in terms of a – I made a few examples of what they would be if we looked, not necessarily under the Finger Plan, but we looked – if we looked at the schools right now that are 90 percent or more black to schools that are less than ten percent black, and some of the examples would be – these are not exact,

because they are not routing distances. They're simply mileage. And the routing distances of a school bus to go from one place to another is always going to be higher than the distances I will give here.

Q. Well, how did you compute the distances that you're going to give?

A. Mileage in terms of the most direct route by a car, by an automobile, for one staff member to go to another school. But that – a school bus obviously is going to take a different route.

* * *

[p. 716] Q. Do you have an opinion as to whether or not the board's 1985 K-4 Neighborhood Plan has had the effect of increasing community involvement in the schools in Oklahoma City?

A. Yes, I do.

Q. What is that opinion?

A. That from every indication that you want to look at, there's much more community involvement in the schools than there had been before, and that the sport is out there in terms of the community for the school system.

* * *

[p. 727] A. Okay, the schools that are predominantly black, and that's the very bottom of that column, and that cost is $1,562 per student. So the cost of the schools that are 90 percent or more black is $10 – averages $10 per student more than the cost of the schools where there are ten percent or less black students.

* * *

Q. In your opinion, are the funds allocated per student at the various schools throughout the district in any way discriminatory against minority people?

A. Not at all.

* * *

[p. 736] Q. * * * Do you have an opinion, based upon your educational background and your experience, as to whether or not parental involvement is essential to positive academic achievement?

A. Very much so. We talked earlier about community support for bond issues and financial, but the same thing is true in terms of academic achievement in terms of students, in my opinion.

Q. Do you have an opinion as to whether or not the increase in parental involvement that has been experienced in this district over the past two years is related to the K-4 Neighborhood Plan?

A. Well, definitely. I think the district had made attempts [p. 737] and had tried to continue to promote and retain parental involvement through the number of PTA organizations, through membership, through a variety of other things, and yet it had steadily declined.

With the return of the neighborhood schools, people were much more willing to participate in PTA meetings, they were much more willing to come to parent conferences, open houses, and other things such as that.

Q. In your opinion, if the Neighborhood Plan is allowed to continue in operation, will we see additional increases in parental involvement?

A. Definitely. And I think it's one thing that when you look at the various numbers, you know, part of the problem that the state PTA has had is to keep up with our growth, because we're growing so quickly. The number used in exhibit 140 says that we have 42 PTA's. Well, the exhibit was done earlier this spring, and we now have over 50. So it's continuing to grow at that kind of a rate.

The memberships also continue to increase, and I would predict that within a year, by this time next year, that all the schools would have a PTA, and that membership in every school would be increased, as well.

Q. Speaking or exhibit 140, is that the one where the state department or the state PTA data is attached?

A. Yes, that's correct.

* * *

[p. 742] MR. CHACHKIN: I'm not going to ask the witness anything further, Your Honor, but, again, I would respectfully move that the exhibit should be stricken. It is hearsay, and there's no adequate foundation for it.

THE COURT: I think his explanation is sound enough to justify its admission.

* * *

[p. 744] Q. And so it is – the exhibit does not represent a comparison of the performance of the same group of students from one year to the next.

A. That – that is correct. We could do that, and I think you would find, really, the same – the same reduction of gap.

Q. Well, you couldn't do it for the metropolitan achievement test, because it hadn't been given in the second grade up until this point.

A. No, we could go third-grade/fourth-grade, however.

Q. I'm sorry, my understanding was that it was only administered in the third, seventh and tenth?

A. In 1985/86, it was administered in three, seven, and ten, but in 1986/87, we could compare the same third graders with the same fourth graders.

Q. But that's not what this exhibit does.

A. No, it does not.

Q. It doesn't really show the change in gap of performance, if you want to put it that way, looking at the same group of students.

A. It does not compare the same group of students. It compares the same grade level, and that's an accepted technique.

* * *

KAREN FRANCIS LEVERIDGE

[p. 775] Q. What is your opinion?

A. I think it's, without a doubt, probably – probably one of the major reasons for that increase and for that stability coming back.

Q. Have you personally observed this increase yourself –

A. Yes, I have.

Q. – Throughout the community?

A. Yes.

Q. Can you share with us a few of the incidents that you have observed?

A. Well, I have stayed very active in PTA, though not an officer on the state level or any other level at this time. I have moved on from that involvement. But I work very closely with the state PTA organization through the Oklahoma coalition for public education and other education organizations, as well as work with the legislature.

I also do have three grandchildren who will be in the Oklahoma City School District next year and two this past year and have kept very involved and very informed of their activities and what's happening within their PTA at Sequoyah School.

* * *

ODETTE M. SCOBEY

[p. 785] Odette M. Scobey, (A black female)

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

* * *

Q. Would you state your name for the record, please.

A. My name is Odette M. Scobey.

Q. And where are you employed?

A. I'm employed presently at the Truman – well, in between the Truman Elementary School and Dunbar Elementary School.

Q. Are you employed by the Oklahoma City Public School District?

A. Yes, I'm employed by the Oklahoma City Public Schools.

* * *

[p. 788] Q. In your visits to other buildings and in communication with other principals, do you feel that, in any way, Truman was discriminated against or afforded any different treatment than any of those other district schools?

A. I cannot say that I have observed that to be true.

Q. Did you have adequate supplies at Truman?

A. Yes. We have been able to acquire adequate supplies.

I would like to explain that. The first two years that I was there it was a fifth-year center, and with the changeover to the neighborhood schools, we have different grade levels, different types of supplies and equipment. So we had to resupply the school for the K-4 building.

Q. But did you acquire those adequate supplies?

A. Yes. Yes.

Q. And was the district receptive to your request for supplies?

A. Yes. As a matter of fact, we were encouraged to be sure that everything was there that was needed upon opening day.

Q. Are you afforded input into the supplies or textbooks at your school?

A. Oh, yes.

* * *

[p. 790] Q. And your staff is mixed; is that right?

A. Yes, it is.

Q. Based on your observations, what was the reaction of parents to the neighborhood school plan?

A. Parents were excited about having a school where they could enter almost any time during the day. As a matter of fact, during the first few weeks of the school year when we reimplemented the neighborhood school, parents would come and want to just go into the room and visit because they had never had this opportunity before.

At dismissal time, there were so many parents standing around the door that we couldn't get the doors open to let the children out.

So that they were very excited about it. They – they were just available and anxious to be a part of the school.

Q. Do a lot of parents walk up to the school?

A. Yes, they do.

Q. What are some other ways that parents have gotten involved in the school?

A. I have parents who volunteer in the classrooms or in any way that we need parents at school, which they did not have this opportunity before.

[p. 791] Our neighborhood is compriesed [sic] of many indigent families who don't have transportation, so therefore they can walk to school.

They help directly in the classroom. They come up and have lunch with their students. Those who work outside the home can come for early conferences, 7:30 in the morning, or make an effort to be there by 3:00 or 3:30 in the afternoon.

So there were many avenues opening up to parents to be directly involved with their students and with their schools.

Q. Ms. Scobey, has that level of parental involvement changed with the implementation of the neighborhood school plan?

A. I believe it has. During the time that we were a fifth-year center, parents came as we needed them to come. But now many times parents do volunteer to be involved.

Q. In your opinion, do parents support the neighborhood school plan?

A. Yes. The only objection which I have heard is that some of the students do have to walk longer distances, and parents have a concern about that.

Q. Do you have parents that sometimes assist children walking to school or assist at crosswalks?

A. Yes. Upon opening of school the first year of the neighborhood plans, students – I realized that the students had never had to cross a street before and had no idea how to do so safely. So they would just bolt out of the door across [p. 792] the traffic.

Parents who saw this – as a matter of fact, a grandparent who saw this happening, volunteered to man the crosswalks. We had two parents every day at 3 o'clock who were there, until the health of one of them failed, and she's no longer able to do this, and the father had to gain other employment. But they volunteered to bring order to dismissal, which helped us a great deal.

Q. Ms. Scobey, in your opinion, do the students appreciate or enjoy having a neighborhood school?

A. The students are very proud, because many of them are attending a school that their parents attended, so they have a special sentimental attachment to this particular school. And I can only speak for Truman. But, yes, the students are very proud.

As a matter of fact, during our recognition of student of the year, one of the students wrote that he was very glad to be there because he had been involved in more activities than he had ever had an opportunity to participate in, and he was a fourth-year student.

Q. What kind of extracurricular activities do you have at Truman?

A. We have Boy Scouts, which is not new. We also had that during the time of the fifth-year center. But we've also had Girl Scouts added.

[p. 793] We have a teacher who volunteers to do a little thing we call the Truman Troopers, and they come in before school, sing, do plays which they present to the student body or at PTA meetings.

Students have had the opportunity to perform for their parents during night meetings.

Parents have come up to have lunch with their students.

If we have special activities on the playgrounds, such as our 89er day, which was named "Truman Hoedown," parents came up and were involved with the students in kite flying and other outside activities.

Q. Were you able to have extracurricular activities to this extent before the neighborhood plan?

A. Not at Truman. No, we did not.

Q. At any other Elementary School?

A. At the previous school, yes. At the Western Village School where I was principal seven years, we did have a high level of parent involvement there.

Q. And was that a stand-alone school?

A. It was not a stand-alone school my first five years, but the last two years it was a stand-alone school.

Q. If students were bussed, would they be able to be involved in activities like the Truman Troopers?

A. They are limited, in that they must observe the bus schedule.

[p. 794] I might add that we can also provide students extra time to do academic work. Many times students would leave their homework or be absent for a day or two, and they can come in or stay late after school and complete their work assignments.

Q. Have you noticed a change in discipline with the implementation of the neighborhood school plan?

A. Yes. Our students, during the first year of the neighborhood plan, felt that they had to fight, and I cannot say exactly why they had to fight, but we had more referrals for fighting during the first year than we did the second year of the neighborhood plan.

Q. Has it been easier to discipline students with the neighborhood plan in any respect?

A. It is easier in that parents are available to us. We can see a parent when they bring the child to school or when they pick a child up from school. We don't have to suspend them for long periods of time for minor discipline problems, and that, in itself, makes it much better for us.

Parents will arrange to come early in the morning, or I can get in my car and take a child to the parent, if that becomes necessary.

I have often visited parents in their homes after working hours. They're just more available to us.

Q. Have you been able to use after-school detention as a disciplinary measure?

[p. 795] A. Yes, we do. We keep students for about 20 minutes after school.

Q. Could you do that if these students were bussed?

A. No.

Q. Have you been trained in the district's effective schools program?

A. Yes, I have.

Q. Have teachers in your building been trained?

A. Yes, the majority of them have.

Q. Do you set goals at your building?

A. Yes.

Q. What are some of those goals?

A. One of the goals which we set this year was to increase parent involvement.

Another goal was to raise our achievement scores closer to the 50th percentile.

And our immediate goal was to raise those scores by six percent during the first year, six percent the second year, and by the third year we hope to have our students at the 50th percentile in reading and math.

Q. Have you achieved some of those goals?

A. We came within one percentage point, in a quick review which we did at the building level, in the first grade. The other two grades did not get that close. But the first graders did get within one percentage point of reaching our goal.

* * *

[p. 798] Q. In your opinion, does the school board or the school administration discriminate in any way against students at Truman School?

A. No, I don't believe so.

Q. Or the faculty?

A. No.

Q. Or the parents?

A. No.

* * *

LINDA JOYCE JOHNSON

Linda Joyce Johnson, (A black female)
being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. DAY:

Q. Ms. Johnson, state your full name for the record.

A. Linda Joyce Johnson.

[p. 802] Q. What is the affirmative action goal set forth in that plan?

A. The goals set forth in this plan are twofold. There are building goals, which are building staff goals, and those goals are black other, for the black teaching staff in each school building. The goal is that each building has a black teaching percentage 36.9 with a ten percent variance plus or minus.

There are also goals, district-wide goals, and those are for all races. I believe those goals are – they begin on

page 35 and they're by category, not just for black other, they're for all races. We have a goal for Asian males, for example, in the elementary teaching field.

So the district-wide goals are by category. Those categories are defined from the EEO-5 report, which is 17 broad categories.

Q. In your opinion, as the affirmative action officer for the district, does the Oklahoma City Board of education attempt to [p. 803] implement its affirmative action plan in good faith?

A. Yes.

Q. Does the board of education have an affirmative action and equal opportunity policy –

A. Yes, they do.

Q. – In addition to this plan?

A. That is correct.

* * *

[p. 809] Q. Have you recently made any recommendations to the board of education concerning its affirmative action policy?

A. Yes, sir, I have.

Q. Would you give us the background behind that, please?

A. One of my goals this year was to recommend a plan to balance the schools. So, in order to try to obtain that goal, I prepared an affirmative action plan for balancing the schools and worked with my supervisor in devising that plan.

Q. Was this done in conjunction with the closing of the seven schools and the reassignment of faculty for those schools?

A. Yes, it was.

Q. Okay.

A. Okay. What the plan did was outline some steps for – what the plan did, it outlined steps for principles, personnel, and the affirmative action office to follow in order for us to try to get more schools into compliance with the current affirmative action goals.

Q. Is that exhibit 193, Ms. Johnson? Was that your recommendation to the board this past April?

A. Yes, it is.

Q. How did the board respond to your recommendation?

A. This recommend was approved by the board.

Q. Is that shown in the official minutes of the board meeting?

A. Yes, it is.

[p. 810] Q. Is that – are those minutes set forth as exhibit 194?

A. Those are the minutes.

Q. There's been previous testimony from Mr. Vern Moore, Executive Director of Personnel, that as a result of the closing of the seven elementary schools this past year, the primary consideration of faculty reassignment was affirmative action.

Was that your understanding?

A. That is correct. That is my understanding.

Q. And was your recommendation to the board this past spring consistent with that goal?

A. Yes, it was.

Q. You mentioned earlier in your testimony that if an employee in the school district felt that they were being discriminated against on the basis of race that they could file an EEOC complaint; is that right?

A. That is correct.

Q. And in the position of affirmative action office, do you know when such complaints are filed?

A. Yes, I would.

Q. Do you recall when the board implemented their neighborhood school plan in 1985/86?

A. Yes, I do.

Q. The K-4 neighborhood school plan?

A. Yes, I do.

[p. 811] Q. That plan has now been in operation two years.

As a result of the faculty assignments resulting from the implementation of the board's 1985 student assignment plan calling for neighborhood schools, did any teacher or faculty member file an EEOC complaint in connection with their assignment claiming race discrimination?

A. No, sir, they did not.

Q. Has any black teacher filed an EEOC complaint because he or she was not allowed to teach in a black school in the northeast quadrant?

A. Yes, sir, they have.

Q. Tell us about that.

A. We have one complaint pending from a black non-continuing contract teacher who was not placed at green pastures this past school year. This complaint was filed with the EEOC and it is pending at this time. She was not placed at green pastures because the black faculty at that particular school was above the goal. That was one of the reasons.

Q. Do you find it common that black personnel wish to be stationed near their homes?

A. I can't answer that based on facts, because I really don't get involved with all of the personnel hiring.

Q. Okay.

A. I have had occasion to hear about that, but I do not know directly.

[p. 812] Q. In your opinion, as the board's affirmative action officer, did the school district, through the implementation of the 1985 K-4 neighborhood plan, discriminate against black faculty members?

A. No, it did not.

Q. Since you have been employed by the Oklahoma City School District, has the Board maintained an integrated faculty?

A. Yes, it has.

Q. Has the board maintained integrated staffs?

A. Yes, it has.

Q. Has the board maintained integrated administrative positions?

A. Yes, it has.

Q. And has the board maintained a group of integrated support employees?

A. Yes, it has.

Q. Throughout the school district?

A. That is correct.

Q. In your opinion, does the Board's affirmative action plan and affirmative action policies discourage race discrimination?

A. In my opinion, yes, it does.

* * *

[p. 814] THE WITNESS: It is my opinion that the Oklahoma City Public School District is a Unitary School District. The board is racially integrated, the staff, the student body, and, as a parent, I also know that the activities, the extracurricular activities are also integrated.

THE COURT: Has this integration that you tell the court about been a part of the program of the school board at all times since January, 1977, when the court terminated its jurisdiction? Do you have an opinion as to that period of time?

THE WITNESS: I do not have an opinion as to that period of time.

Restate your question. I'm not sure I understand what you're asking.

THE COURT: Well, after the court surrendered its jurisdiction, to date, –

THE WITNESS: Uh-huh.

THE COURT: – Has the school board operated a Unitary school system?

THE WITNESS: Yes, I do have that opinion that it has operated as a unitary school system.

THE COURT: Now, does that include the K-4 plan also?

THE WITNESS: Yes.

THE COURT: Did the – in your opinion, does the K-4 plan in any way disturb the Unitary school system that's been [p. 815] in operation?

THE WITNESS: Oh, no, sir.

THE COURT: Has there been any discrimination that you've been able to find on the part of the school board in the establishment of the K-4 plan?

THE WITNESS: No, sir.

THE COURT: Is it free of discrimination?

THE WITNESS: In my opinion, yes.

THE COURT: Do you have an opinion as to the public acceptance of the Unitary school system as it's now operating?

THE WITNESS: I have an opinion that it's been accepted by many, and also there are some who have not accepted it for various reasons.

THE COURT: Do you have an opinion, from your knowledge and from your work and services you have performed for the past several years, whether or not the Unitary system would continue if the court, you might say, abdicated further duties?

THE WITNESS: It is my opinion that the Oklahoma City Public School system would remain as a Unitary School System.

* * *